TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1924

No. [redacted] 148

J. L. LANCASTER AND CHARLES L. WALLACE, RECEIVERS OF THE TEXAS & PACIFIC RAILWAY, PLAINTIFFS IN ERROR,

vs.

B. W. McCARTY, J. T. McCARTY, GUY McCARTY, ET AL., ETC.

IN ERROR TO THE COURT OF CIVIL APPEALS FOR THE SECOND SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS

FILED AUGUST 11, 1924

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SUPREME COURT OF THE UNITED STATES

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No. 497

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 20, 1923

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[fols. 1 & 2] CAPTION—Omitted

[fol. 3] IN THE

COUNTY COURT AT LAW, EASTLAND COUNTY, TEXAS

No. 2675

B. W. McCARTY, J. T. McCARTY, GUY McCARTY, LLOYD McCARTY, and George Harris, Partners, Doing Business under the Style and Firm Name of Cisco Furniture Company, Plaintiffs,

vs.

J. L. LANCASTER and CHARLES L. WALLACE, Receivers of the Texas & Pacific Railway, a Corporation, Defendants

PETITION—Filed Nov. 20, 1920

Plaintiffs complain of defendants and allege:

First. That the plaintiffs are residents of the County of Eastland, State of Texas, and the defendants are the duly qualified and acting receivers of the Texas & Pacific Railway a corporation, defendant, with offices in the City of Cisco, said County and State, in charge of N. W. Eubank who resides in said city, as their agent.

Second. That at all of the times hereinafter mentioned the defendants were as such receivers in possession of, and operating a certain railroad extending from the city of Fort Worth, Tarrant County, Texas to the said city of Cisco; and the said defendants were at such times and still are engaged in the business of operating railroad cars and transporting freight on said road as common carriers for hire.

Third. That on the 13th day of March, 1920, the plaintiffs were the owners of, and in possession of two rugs, two breakfast chairs and one straight chair which were on that date delivered by plaintiff to the defendants at Fort Worth, Texas, and which the defendants then and there duly accepted to be safely and securely carried, conveyed and transported over said railroad to the said city of Cisco, with ordinary care and with reasonable diligence and speed and to be [fol. 4] safely and securely delivered to plaintiffs at said city of Cisco, for the reasonable charges therefor to be paid on the delivery thereof to plaintiffs; and which said charges were duly paid by plaintiffs to defendants.

Fourth. That defendants did not safely carry, transport and deliver said goods pursuant to said agreement, but on the contrary, were careless and negligent, and the defendants, their agents, servants and employees so carelessly and negligently acted and conducted in regard to such shipment in the business of defendants as such common carriers, that said goods were damaged and injured as follows:

(A) Each of said rugs were negligently and carelessly allowed by defendants, their agents, servants and employees to come into contact with an acid or other fluid of a similar character with the result that a large hole was eaten out of the centre of said rugs, thereby rendering the same wholly worthless and without value; that said rugs were reasonably worth $90.00 each.

(B) That the two breakfast chairs mentioned were damaged and injured in that the cross rounds or braces supporting the legs of such chairs were broken and destroyed thereby damaging said chairs and depreciating the value *the* each chair to the extent of $2.50 or $5.00 for the two chairs.

(C) That the said straight chair mentioned was damaged and injured in that the rounds thereof and one of its legs were broken and destroyed, thereby damaging said chair to the extent of $3.00.

All of which resulted in plaintiffs' damage in the sum of One Hundred Ninety-eight ($198.00) dollars.

Fifth. That more than thirty days prior to the institution of this suit plaintiffs presented their claim in writing for said damage to the defendants and repeatedly demanded payment thereof; but the [fol. 5] defendants have failed, refused and neglected to pay said sum of One Hundred and Ninety-eight ($198.00) Dollars, or any part thereof; and still refuse so to do; and by reason of such failure it has become necessary for palintiff- to employ Patterson & Sherry, attorneys at law, to bring this suit and plaintiffs have so employed said attorneys and obligated themselves to pay said attorneys, an attorneys' fee of $20.00 for services rendered in this case.

Wherefore plaintiffs pray that the defendants be cited to appear and answer herein and that upon final determination of this cause plaintiffs have judgment against the defendants for the sum of One Hundred Ninety-eight ($198.00) Dollars damages as aforesaid, and $20.00 attorneys' fees; together with interest on said sums as provided by law, and costs of this suit; and for all other and further relief as to the court may seem just and proper.

Patterson & Sherry, Attorneys for Plaintiffs.

[File endorsement omitted.]

[fol. 6] IN THE COUNTY COURT AT LAW OF EASTLAND COUNTY, TEXAS

[Title omitted]

DEFENDANTS' ORIGINAL ANSWER—Filed June 22, 1921

To Honorable Joe Jones, Judge of said Court:

Now comes the defendants in the above styled and numbered cause and represent and show to the court:

That they deny each and all the material allegations in plaintiffs' original petition herein filed on November 20, A. D. 1920, demand strict proof of the same and put themselves upon the country.

Conner & McRae, Attorneys for Defendants.

And for special answer defendants represent and show to the court that it is true as claimed by plaintiff- that on March 12, A. D. 1920, that it received from the Ellison Furniture & Carpet Co. a shipment of goods consigned to the Cisco Furniture Co. covering and embracing, among other things, the articles of goods, wares and merchandise as claimed by plaintiffs to have been damaged during transportation; that said shipment was received at Fort Worth, Texas, and consigned to the plaintiffs herein at Cisco, under and by virtue of a certain written contract and agreement duly executed by and between the said Ellison Furniture & Carpet Co. and the defendants herein that under and by virtue of the terms of said contract and under and by virtue of the law in such cases made and provided this defendant only undertook and agreed to transport and carry the articles of merchandise as claimed by plaintiffs to have been injured during transportation from Fort Worth to Cisco, Texas, and deliver the same to plaintiffs in like condition in which it received the same for transportation by the exercise of only ordinary care; that it did receive said shipment as aforesaid and exercised due [fol. 7] and ordinary care in the handling and transporting of the same.

That said shipment was received and transported, subject to the regulation and rules of the Railroad Commission of Texas and of the Interstate Commerce Commission and the classification of freight rates as described and fixed by the Western Classification of such freight rates as adopted duly posted and filed with the Interstate Commerce Commission and in force at the time of the transportation of said goods, wares and merchandise and in this connection, defendants represent and show to the court that at the time of the making of said contract of shipment the shipper of such goods, wares and merchandise fixed and placed a valuation on the rugs included in such shipment of less than $75.00 per 100 lbs. and that under the law and under the tariff rates as fixed and adopted by the Interstate Commerce Commission the plaintiffs herein received the benefit of a less freight rate than they would have received had a

greater valuation been placed thereon and derived the benefit of a less freight rate charge and therefore under the terms and conditions and provisions of said contract of shipment and under the law they were limited to their right of recovery herein in so far as any right to recover damages is concerned to such damage only as they may have sustained, based upon such valuation.

That the terms and provisions of said contract of shipment and the classification of freight and said freight rates as aforesaid were binding upon all parties hereto and the defendants herein plead, each and all the terms, provisions and stipulations as in said contract of shipment contained, the same and to that extent as if specially set out herein, said contract being attached to the depositions of J. S. Huddle as an Exhibit and is here referred to, adopted and made a part of this answer.

Wherefore premises considered, defendant pray judgment of the court that they go hence without day and recover their cost in this behalf expended.

Conner & McRae, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 8] In the County Court at Law, Eastland County, Texas

[Title omitted]

Judgment Entry

This cause coming on for hearing this day the plaintiffs appearing by Patterson & Sherry, Esqs., their attorneys of record herein, and the defendants appearing by Conner & McRae, Esqs., their attorneys of record herein, the court finds that the parties hereto have filed herein an agreed statement of facts; and after considering said agreed statement of facts and hearing the arguments of counsel and being fully advised in the premises the court finds that the plaintiffs should recover judgment against the defendants for the sum of $198.00 damages, and $20.00 attorneys fees, together with interest thereon from date hereof until paid at the rate of 6% per annum and costs of suit, less a credit of $10.00.

It is therefore considered, ordered, and adjudged that the plaintiffs, B. W. McCarty, J. T. McCarty, Guy McCarty, Lloyd McCarty and George Harris, partners doing business as Cisco Furniture Company, do have and recover of and from the defendants J. L. Lancaster and Charles L. Wallace, as Receivers of The Texas & Pacific Railway, a corporation, the sum of Two Hundred Eight ($208.00) dollars, together with 6% interest thereon from date hereof until paid, and costs herein to be taxed, and that execution issue therefor, to which judgment and decree of the Court the Defendants then and there duly excepted and in open court then and there gave notice

of appeal in open court to the Court of Civil Appeals for the Second Supreme Judicial District of Texas, at Fort Worth, Texas, and upon due motion 90 days is hereby granted all parties hereto from and after the adjournment of this term of Court in which to prepare, present, have approved and filed a statement of facts and bills of ex-
[fol. 9] ceptions in this case. Done in open court at Eastland, Texas, this 20th day of June, 1921.

O. K. J. H. Jones, Judge County Court at Law, Eastland County, Texas. O. K. Conner & McRae and Patterson Sherry.

[fol. 10] IN THE COUNTY COURT AT LAW, EASTLAND COUNTY, TEXAS

[Title omitted]

PETITION FOR WRIT OF ERROR—Filed Dec. 15, 1921

To the Clerk of the County Court at Law in and for Eastland County, Texas:

Your petitioners, J. L. Lancaster and Charles L. Wallace, Receivers for the Texas & Pacific Railway Company, a private corporation respectfully represent and show that heretofore to-wit: On the 20th day of June, A. D. 1921, a judgment was rendered in the County Court at law of Eastland County, Texas, for the sum of $208.00, together with 6 per cent interest per annum thereon, from the date of said judgment until paid and all costs of suit in favor of B. W. McCarty, J. T. McCarty, Guy McCarty, Lloyd McCarty, and George Harris, engaged in business as partners under the firm name of Cisco Furniture Company and against your petitioners in a certain cause pending in the County Court at Law of Eastland County, Texas, numbered 2675 on the docket thereof and in which the said B. W. McCarty and others were plaintiffs and your petitioners were defendants.

That the trial of said cause was before the court and upon the rendition of said judgment your petitioners then and there duly excepted and herewith present their assignments of error and a supersedeas bond in the sum of $450.00, payable and conditioned as required by law, and they are desirous of suspending the enforcement of said judgment and execution thereon.

That on account of the many errors therein as is of record manifest your petitioners desire to remove said judgment to the Court of Civil Appeals in and for the Second Supreme Judicial District of Texas, at Fort Worth, for revisions and correction of the many errors therein.

Wherefore your petitioners respectfully pray that citation in error issue to said adverse parties in terms of law and that said judgment may be removed to the said Court of Civil Appeals for revision and [fol. 11] correction of the many errors therein pointed out in your

petitioners' assignments of error herein filed and for all other proper relief.

Conner & McRae, Attorneys for Petitioners.

[File endorsement omitted.]

[fol. 12] IN THE COUNTY COURT AT LAW, EASTLAND COUNTY, TEXAS

[Title omitted]

WAIVER OF CITATION—Filed Dec. 31, 1921

Now comes B. W. McCarty, Guy McCarty, Lloyd McCarty and George Harris, parties doing business under the firm name of Cisco Furniture Company, — hereby waive the issuance and service of citation in error in said cause, and hereby and by this instrument enter our appearance therein on appeal.

B. W. McCarty, Guy McCarty, Lloyd McCarty, George Harris,
By Patterson & Sherry, Attorneys.

[File endorsement omitted.]

[fols. 13 & 14] [Title omitted]

SUPERSEDEAS BOND ON APPEAL FOR $208.00—Approved and filed Dec. 15, 1921; omitted in printing

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[fol. 15] IN THE COUNTY COURT AT LAW, EASTLAND COUNTY, TEXAS

[Title omitted]

ASSIGNMENT OF ERROR—Filed Dec. 15, 1921

To the Honorable Court of Civil Appeals:

Now come the defendants, J. L. Lancaster and Charles L. Wallace, Receivers for the Texas & Pacific Railway Company and say that the trial court committed many errors on the trial of said cause as is of record manifest and make the following assignments of error, to-wit:

First Assignment of Error

The Court erred in rendering judgment against defendants for more than $68.00, including $8.00 to cover the cost of repairing plaintiff's three chairs but exclusive of attorneys' fees, it affirmatively

appearing from the undisputed evidence that at the time the two rugs (weighing 40 pounds each) alleged to have been damaged in transit were delivered to defendants for transportation from Fort Worth to Cisco, Texas, the shipper endorsed on the shipping contract covering same a valuation of less than $75.00 per cwt. to secure the benefit of a lower rate or charge provided for the transportation thereof under such declaration of value than would otherwise apply, such lower rate being determined by and provided for in certain classifications and tariffs duly filed with the Interstate Commerce Commission and made effective pursuant to an order of said Interstate Commerce Commission entered in the so-called Shreveport Rate Case, and in compliance with the requirements of said order were made to apply impartially to both intrastate and interstate traffic.

Second Assignment of Error

It affirmatively appearing from the undisputed evidence that plaintiffs enjoyed the benefit of a lower transportation charge on a certain lot of rugs transported from Fort Worth, Texas, and delivered to them by defendants at Cisco, Texas, than would otherwise have been [fol. 16] assessed by reason of the shipper thereof having placed a valuation thereon by means of an endorsement stamped on the shipping contract at the time same were delivered to defendants and such contract was executed, declaring the valuation of such rugs to be less than $75.00 per cwt., such lower rate being provided for in and determined by certain classifications and tariffs duly filed with the Interstate Commerce Commission in pursuance of its order entered in the so-called Shreveport Rate Case, and applicable impartially to both intrastate and interstate traffic, the court erred in rendering judgment against defendants for more than $68.00 including $8.00 to cover the cost of repairing plaintiff's three chairs but exclusive of attorney's fees, it further appearing that two of the rugs included in said shipment, weighing 40 lbs. each, were damaged so as to render them practically worthless.

Third Assignment of Error

Plaintiffs having failed to meet the requirements of R. S. 1911, Art. 2178, by making proof that the judgment recovered by them therein was for the full amount of the claim originally presented by them to defendants, it was error to award them a recovery of attorney's fees.

Wherefore, said defendants respectfully pray that said cause be reversed and rendered herein and in the alternative that the same be reversed and remanded and for such other and further relief whether equitable or otherwise as the record herein and the law of the case warrant as in duty bound will ever pray.

Conner & McRae, Attorneys for said Receiver.

[File endorsement omitted.]

[fol. 17] BILL OF COST—Omitted in printing

[fol. 18] THE STATE OF TEXAS,
County of Eastland:

CLERK'S CERTIFICATE

I, Earl Bender, Clerk of the County Court at Law, in and for the County of Eastland, hereby certify that the foregoing 20 pages contain a true and correct transcript of the record of all the proceedings had in this cause, as the same appears of record and now on file in my office.

To certify which, witness my hand and seal of this court, this the 19th day of January, A. D. 1922.

Earl Bender, Clerk County Court at Law, Eastland County, Texas, By J. D. Hilton, Deputy.

[fol. 18½] [File endorsement omitted.]

[fol. 19] IN THE COUNTY COURT AT LAW OF EASTLAND COUNTY, TEXAS

[Title omitted]

AGREED STATEMENT OF FACTS—Filed Jan. 10, 1922

It is agreed by and between the parties to said cause that the following facts and none other were introduced on the trial of said cause in the nature of an agree*ment* Statement of Facts, to-wit:

[fol. 20] [Title omitted]

To the Honorable Joe Jones, Judge of said Court:

It is agreed by and between the parties hereto, that the above style and numbered cause may be submitted to the court on the following agreed statement of facts, to-wit:

On March 12, 1920, the Ellison Furniture and Carpet Company entered into a written contract of shipment with the defendants at Fort Worth, Texas, as follows, to-wit:

Form 66. Rev. 11–16

The Texas & Pacific Railway, J. L. Lancaster and Pearl Wight, Receivers

Shipper's No. —. Agent's No. —

Straight Bill of Lading—Original—Not Negotiable

For Use Only Between Points Within the State of Texas

Ft. Worth, Tex., 3, 12, 1920.

Received from Ellison F. & C. Co., at ——, the following packages, contents and value unknown, in apparent good order, except as noted, marked and numbered as per margin, to be transported from —— (must be a station on this line) to —— (must be a station on this line) there to be delivered to consignee, unless destined beyond, and if destined beyond, then Receivers of the Texas & Pacific Railway agree, as agent for the shipper, to tender the shipment to a connecting carrier, enroute to destination.

Consigned to Cisco Furn. Co. (Mail address not for purposes of delivery).

Destination: Cisco, State of Tex., County of ——.

Route: ——. Car Initial: ——. Car No.: ——.

[fol. 21]

No. packages	Description of articles and special marks	Weight (subject to correction)	Class or rate (subject to correction)	Check column
3	Bu 6 SU Fibre Chairs	.....	.....	.....
1	Crate 1 Davenport	.....	.....	.....
1	Crate 1 Chair 1 Rocker SU	.....	.....	.....
1	Crate 2 SU Rockers	.....	.....	.....
1	Crate 1 Lib. Table	.....	.....	.....
5	Crates Wood Bed Ends	.....	.....	.....
1	Bu Rails	.....	.....	.....
2	Slats	.....	.....	.....
1	Crate 5 Rockers 1 Chair Su	.....	.....	.....
1	Crate 2 Su. Chairs	.....	.....	.....
1	Crate 1 Dresser Base	.....	.....	.....
1	Crate 1 Vanity Su	.....	.....	.....
2	Crates 2 Glass	.....	.....	.....
1	Crate 1 Dr. Table Base	.....	.....	.....
1	Crate Dr. Standards	.....	.....	.....
2	Crates 2 Chiffs	.....	.....	.....
1	Crate Su. Bench	.....	.....	.....
1	Crate Nt. Table	.....	.....	.....
1	Crate 1 Refrigerator	.....	.....	.....
4	Rolls 10 Rugs	.....	.....	.....
2	Bu. 24 Rugs	.....	.....	.....

If charges are to be prepaid, write or stamp here, "To Be Prepaid." ——.

Received $— to apply in prepayment of the charges on the property described hereon. —— ——, Agent or Cashier, Per —— —— (the signature here acknowledges only the amount prepaid). Charges advanced: $——.

Received T. + P. I. + G. N. Warehouse, Mar. 12, 1920. Fort Worth, Texas. W. R. Daniels, Agt., Per —— ——., Agent. L.

Valuation on rugs less than $75.00 per $100 pounds.

E. F. & C. Co., Shipper, Per J. S. H. —— ——. Per —— ——.

(This bill of lading is to be signed by the shipper and agent of the carrier issuing same.) Conditions on back.

(Statement on Back of Bill of Lading)

It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, [fol. 22] that every service to be performed by any carrier shall be subject to all the conditions, whether printed or written, herein contained and which are agreed to by the shipper and accepted for himself and his assigns.

Conditions

Section 1. No carrier or party in possession of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, quarantine, the authority of law, riots or strikes, or the act or default of the shipper or owner, or for differences in the weights of grain, seed, or other commodities caused by natural shrinkage or discrepancies in weights, or for any vice or inherent defect in the property shipped.

Section 2. If shipment is destined to a point off this railway, it is agreed that this is no contract for through shipment and this carrier's liability as a common carrier shall terminate on tender of delivery to a connecting carrier.

Section 3. No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market, or otherwise than with reasonable dispatch, unless by specific agreement endorsed hereon. Every carrier shall have the right in case of physical necessity to forward said property by any railroad or route between the point of shipment and the point of destination.

Section 4. All property shall be subject to necessary cooperage and bailing at owner's cost.

Section 5. Property not removed by the party entitled to receive it within the time required by law, or the rules and regulations of the Railroad Commission of Texas, after notice of its arrival has been duly sent or given, may be kept in car, depot or place of delivery of the carrier, or warehouse, subject to legal charges as fixed by the Railroad Commission of Texas, and to carrier's responsibility as warehouseman only; or may be at the option of the carrier removed [fol. 23] to and stored in a public or licensed warehouse at the cost of the owner, and there held at the owner's risk, and without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a personal charge for storage.

Section 6. Every party, whether principal or agent, shipping explosive or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for all loss or damage caused thereby, and such goods may be warehoused at owner's risk and expense, or destroyed, if necessary, without compensation.

Section 7. It is mutually agreed that as a condition precedent to the right to recover for any damages, or claim, or injury to, a partial

or total loss of, or the depreciation or decline of the market value of, the shipment, during the transportation thereof, or prior to or after the termination of such transportation, party claiming such right of recovery, shall give notice in writing of such claim, stating the nature and character thereof to some officer of the carrier, or to the nearest or the most convenient local agent of the carrier, or if delivered at a point beyond the carrier's line of road, the nearest or most convenient station agent of the carrier making such delivery; such notice cannot and shall not be waived, except in writing by the General Freight Agent or Auditor of the carrier; nor shall any such claim for damages be recoverable unless such written claim therefor shall be presented to the carrier within one hundred twenty days after the same may have been accrued; the filing of a suit shall not be a compliance with this requirement of notice.

Section 8. It is further agreed that no suit or action against the carrier for the recovery of any claim for damages accruing or arising out of said shipment, or of any contract pertaining to the same, or the furnishing of facilities for the transportation thereof, shall be sustained in any court of law or equity, unless such suit or action shall be commenced within two years next after the cause of action shall have accrued.

[fol. 24] Section 9. It is mutually agreed that the carrier may select the route for transpor-ation of said property unless otherwise endorsed hereon.

Section 10. Any carrier or party liable on account of any loss or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance.

Section 11. This Railway does not carry any article not shown in classifications or the tariffs of the Railroad Commission of Texas and shall not be liable for loss or damage to any such articles although contained in packages receipted for.

Section 12. This bill of lading is given subject to correction as to rate, weight and classification, so as to conform to the rates, rules and regulations prescribed by the Railroad Commission of Texas.

Section 13. No agent of this Railway has authority to make an oral contract for the shipment of freight and this bill of lading contains all of the provisions of the contract of shipment between the parties hereto and no qualifications, alterations, erasures in or additions to the conditions thereof, shall be made except under the written directions of the General Freight Agent, or the Auditor for receivers, attached hereto.

That the goods, wares and merchandise set forth and described in the above contract of shipment were delivered to the defendants at Fort Worth in good condition; that at the time of the delivery of said goods, wares and merchandise and at the time of the execution

of said contract above, the shipper placed a valuation on the rugs mentioned in said contract of less than $75.00 per 100 lbs., that upon arrival and delivery of said goods at Cisco, Texas, two of said rugs, included in said shipment were practically ruined with acid and at the time of such delivery, were of the reasonable market value [fol. 25] of $5.00 each; that each of said rugs weighed 40 lbs. or in the aggregate for both of said rugs, 80 lbs.; that included in said shipment was two breakfast chairs which were received at Cisco in a damaged, broken and injured condition and that the cost of repairing said chairs was $5.00, which was a reasonable charge for its repair; that an additional chair was received at Cisco in an injured condition, there having been broken eight rounds of said chair and that the reasonable cost of repair for such chair was $3.00; that the reasonable market value at Cisco Texas, at time of delivery and arrival of said two rugs that were injured by acid at Cisco was $95.00 for each rug, if the same had have been received at Cisco in an uninjured condition.

That at the time of making said shipment, which was a shipment of less than a car load lot, Western Classification No. 56, R. C. Fyfe's I. C. C. Interstate Commerce Commission No. 14 and items 1, 2 and 3 were in force and effect, having been duly adopted and filed with the Interstate Commerce Commission and is as follows:

Extracts from Items 1 to 3, Page 117, Western Classification No. 56, R. C. Fyfe's I. C. C. No. 14, Filed December 30th, 1919, said Extract, Therefore, Having Been in Force on March 12, 1920

Page 117

Item No.	Article	Less carload
1.	N. C. I. B. N. value declared in writing by the shipper, or agreed upon in writing as the released value of the property, in accordance with the following:	
2.	If not exceeding $75.00 per 100 lbs., in burlapped bales or rolls, or in boxes or wrapped bundles. See Notes 1 and 2	1 class.
3.	If exceeding $75.00 per 100 lbs., and not exceeding $125.00 per 100 lbs., in burlapped bales or rolls, or [fol. 26] in boxes or wrapped bundles. See Notes 1 and 2	1½ class.

Note 1.—The value declared in writing by the shipper, or agreed upon in writing as the released value of the property, as the case may be, must be entered on Shipping Order and Bill of Lading as follows:

"I hereby declare the value of the Rugs herein described as $— per 100 lbs."

—— —— (Shipper's Signature).

"The value of the Rugs herein described is hereby agreed upon as $— per 100 pounds."

—— —— (Shipper's Signature).

2. Rugs of value not exceeding $125.00 per 100 lbs., shipped in bundles must be completely wrapped in three or more thickness- of Sulphite Kraft paper weighing not less than 60 lbs. per ream (480 sheets, 24 x 36 inches), securely tied and knotted at each crossing with polished unoiled hemp twine or rope having a breaking strength not less than the weight of the package and in no case less than 100 lbs. (Issued under authority of Interstate Commerce Commission's Released Rate Order No. 85 of November 13, 1919.)

That the plaintiffs were the owners of said goods at the time same were delivered to defendants at Fort Worth, Texas, as aforesaid.

That under said classification, the freight rates as established by the Interstate Commerce Commission based on Texas lines mileage Circular No. 9-c A. C. Fonda's Interstate Commerce Commission No. 88 and shown by published tariff in item 1200 page 108 Tex. Lines Tariff No. 2-d A. C. Fonda's Interstate Commerce Commission No. 65 was at the time of this shipment, 70c per hundred lbs. on rugs not exceeding in value $75.00 and where such value exceeded $75.00 [fol. 27] but not exceeding $125.00 the rate was $1.05 per hundred lbs. as between Cisco and Fort Worth, Texas, and these rates were duly published in Fonda's Tariff No. 2-E, Interstate Commerce Commission No. 89 and governed by Western Classification No. 56 Interstate Commerce Commission No. 14; that said Interstate Commerce Commission rates and classifications as per such valuation and weight were in full force and effect on March 12, 1920. That the rugs for damage to which this suit was brought fell within such classification.

That the freight rate as provided for in the above classification and tariff as prescribed thereby based upon said valuation for said rugs of less than $75.00 per hundred lbs. was paid at the time of the delivery of the shipment herein by the plaintiffs to the defendants.

That the said tariff and Western Classification as hereinbefore set out were put into effect in pursuance of an order of the Interstate Commerce Commission entered in what is known as the Shreveport Rate Case, and were made by such order applicable to intrastate as well as interstate shipments.

That the plaintiffs herein duly filed within the time provided by law, a claim for damage in this case and the defendants failed and declined to pay the same within the time provided by law and $20.00 is a reasonable claim and charge for attorneys fees in this case.

Patterson & Sherry, Attorneys for Plaintiff. Conner & Rae, Attorneys for Defendants.

Approved: J. H. Jones, Judge Presiding.

[fol. 27½] [File endorsement omitted.]

[fol. 28] **In the Court of Civil Appeals**

[Title omitted]

OPINION—Filed Jan. 13, 1923

This is a suit by B. W. McCarty, Guy McCarty, Lloyd McCarty and George Harris, partners, doing business under the style and firm name of Cisco Furniture Company, hereinafter called plaintiff, against J. L. Lancaster and C. L. Wallace, receivers for the Texas & Pacific Railway Company, a corporation.

Plaintiff alleged that on March 13, 1920, there were shipped to it at Cisco from Fort Worth two breakfast chairs and one straight chair and two rugs, and that the defendants duly accepted the same to be safely and securely transported over said railroad to the City of Cisco with ordinary care and reasonable diligence, and to be safely and securely delivered to plaintiff at Cisco, and that the reasonable charges for said shipment were paid to defendants on the delivery thereof to plaintiff. That defendants were negligent in the transportation of said property, and that by reason of said negligence said rugs were permitted to come in contract with an acid or other fluid, by reason of which a large hole was eaten out of the center of each of said rugs, thereby rendering the same worthless and valueless. That said rugs were reasonably worth $95.00 each. That the two breakfast chairs mentioned were damaged and injured to the extent of $2.50 each. That the straight chair mentioned was damaged and injured in the sum of $3.00, the total damages being $198.00, for which plaintiff sued, and asked that an attorney's fee of $20.00 be allowed in addition.

[fol. 29] The defendants answered by a general denial, and specially pleaded that the goods were shipped from the Ellison Furniture & Carpet Company under a written contract and agreement duly executed by and between the said Ellison Furniture & Carpet Company and the defendants. That said shipment was received and transported subject to the regulations and rules of the railroads of Texas and of the Interstate Commerce Commission, and of the classification of freight rates as fixed by the Western Classification of such freight rates as adopted, duly posted, and filed with the Interstate Commerce Commission and in force at the time of the transportation of the goods. That the shipper of said goods placed a valuation on the rugs of $75.00 per 100 pounds, and that under the rule and under the tariff rates as fixed and adopted by the Interstate Commerce Commission the plaintiff received the benefit of a less freight rate than it would have received had a greater valuation been placed thereon, and that under the law it was limited to its right of recovery to the value so fixed.

The cause was tried before the court, without the intervention of a jury, and a judgment was rendered for the plaintiff for $198.00 damages and $20.00 attorney's fee, together with interest thereon from date of judgment, less a credit of $10.00. The credit of $10.00

was awarded evidently on the ground that the rugs, even in their damaged condition, were worth said sum. The defendants have appealed.

The cause comes before this court on an agreed statement of facts. It is agreed that on March 12, 1920, the Ellison Furniture & Carpet Company shipped the goods, for the damage to which suit was filed, together with other furniture, and that a bill of lading was issued by the defendants, and that upon said bill of lading was stamped the following notation:

"Valuation on rugs less than $75.00 per 100 pounds."

There is no other stipulation or condition contained in the bill of [fol. 30] lading affecting the issues herein involved, nor any reference to any rates adopted by the Interstate Commerce Commission. Section 12 of the conditions on the back of the bill of lading is as follows:

"This bill of lading is given subject to correction as to rate, weight and classification, so as to conform to the rates, rules and regulations prescribed by the Railroad Commission of Texas."

Section 13 provides:

"No agent of this Railway has authority to make an oral contract for the shipment of freight and this bill of lading contains all of the provisions of the contract of shipment between the parties hereto, and no qualifications, alterations, erasures in or additions to the conditions thereof, shall be made except under the written directions of the General Freight agent, or the Auditor for receivers, attached hereto."

No such directions are attached to the bill of lading. It is admitted the goods were delivered to the defendants in good condition, and that the shipper placed a valuation on the rugs mentioned in said contract of less than $75.00 per 100 pounds. That upon arrival and delivery of said goods at Cisco, two of said rugs were practically ruined with acid and were of the reasonably market value of $5.00 each; that each of said rugs weighed forty pounds, or in the aggregate eighty pounds; that the two breakfast chairs were damaged, broken and injured, and the cost of repairing the same was $5.00, which was a reasonable charge. That $3.00 was a reasonable charge for the repair of the other chair. That at the time of making said shipment, which was a shipment of less than a car load, Western Classification No. 56, R. C. Fyfe's Interstate Commerce Commission No. 14 and items 1, 2 and 3 were in force and effect, having been duly adopted and filed with the Interstate Commerce Commission. The extracts from the rates adopted by the Interstate Commerce Commission and contained in the statement of facts are as follows:

[fol. 31] "1. N. O. I. B. N. Value declared in writing by the shipper, or agreed upon in writing as the released value of the property, in accordance with the following:

2. If not exceeding $75.00 per 100 pounds, in burlapped bales or rolls, or in boxes or wrapped bundles, see Notes 1 & 2.

3. If exceeding $75.00 per 100 pounds, and not exceeding $125.00 per 100 lbs., in burlapped bales or rolls, or in boxes or wrapped bundles, see Notes 1 and 2.

NOTE 1.—The value declared in writing by the shipper, or agreed upon in writing as the released value of the property, as the case may be, must be entered on Shipping Order and Bill of Lading as follows:

'I hereby declare the value of the rugs herein described as $— per 100 lbs.'

—— ——, (Shipper's Signature).

or

'The value of the rugs herein described is hereby agreed upon as $— per 100 lbs.'

—— —— (Shipper's Signature).

NOTE 2.—Rugs of value not exceeding $125.00 per 100 lbs., shipped in bundles must be completely wrapped in three or more thickness- of Sulphite Kraft Paper weighing not less than 60 lbs., per ream (480 sheets, 24 x 36 inches) securely tied and knoted at each crossing with polished unoiled hemp twine or rope having a breaking strength not less than the weight of the package and in no case less than 100 lbs. (Issued under authority of Interstate Commerce Commission's Released Order No. 85, of November 13, 1919.)"

That the rates so established by the Interstate Commerce Commission based on Texas lines, mileage circular, were 70 cents per 100 pounds on rugs not exceeding in value $75.00, and where such value exceeded $75.00 but did not exceed $125.00 the rate was $1.05 [fol. 32] per 100 pounds, and that such rates and classifications were in full force and effect on March 12, 1920. That the rugs for damage to which this suit was brought fell within such classification, and that the freight rate paid at the time of the delivery of the shipment was based upon such valuation. That said tariff and Western Classification, as hereinbefore set out were put into effect in pursuance of an order of the Interstate Commerce Commission entered in what is known as the Shreveport Rate Case, and were made by such order applicable to intrastate as well as interstate shipments. That the plaintiff herein duly filed, within the time provided by law, a claim for damages in this case and the defendants failed and declined to pay the same within the time provided by law, and $20.00 is a reasonable claim and charge for attorneys' fees in this case.

Appellants' contention is that the rates established by the Interstate Commerce Commission are applicable in this case, although it was an intrastate shipment, and that the merits of the case must

be decided by the decisions of the Supreme Court of the United States and other Federal courts, and not by the laws of Texas, shown in the statutes and in the decision of the Supreme Court and the Courts of Civil Appeals of Texas. Their contention is that in the Shreveport Rate Case, H. E. & W. Ry. Co. vs. United States, 234 U. S. 342, 58 law ed., 1341, and in the Minnesota Rate Case, Simpson vs. Shepard, 57 Law Ed. 1511, and in other decisions, the Supreme Court of the United States has decided that Congress has the right to regulate intrastate commerce on interstate lines, such as the Texas & Pacific Railway Company, and that the rates and rules established by the Interstate Commerce Commission are binding on the parties to this contract, without reference to any statute of the state or any holding of the state Courts. We understand that the holding of the Supreme Court in the first cited case is that Congress, in the exercise of its paramount power, may prevent the common instrumentalities of interstate and intrastate commercial intercourse [fol. 33] from being used in their intrastate operations to the injury of interstate commerce; and that Congress has the right to control intrastate rates maintained by an interstate carrier, under other authority, to the extent necessary to remove any unjust discrimination against interstate commerce arising out of the relation between such intrastate rates and interstate rates which are reasonably within themselves; and that the Interstate Commerce Commission has authority to control the intrastate rates maintained by the carrier under other authority to the extent necessary to remove such discrimination. There is no contention, and certainly no proof, to sustain such a contention in this case, that the rates charged by state authority upon the shipment in question were unreasonable or discriminatory, or interfered with or affected interstate commerce in any way. As it seems to us, the issues involved in the cases cited by appellants are not involved here. By Act of March 4, 1915, popularly known as the Cummins Act, Congress enacted an amendment to previous legislation regulating interstate commerce, found in Federal Statutes, Supp. 1916, pp. 124 and 125. By Act of August 9, 1916, this Act was further amended, See Federal Statutes, Supp. 1918, pp. 387 and 388, which reads in part as follows:

"Provided, however, that the provisions hereof respecting liability for full actual loss, damage, or injury notwithstanding any limitations of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void, shall not apply, first, to baggage carried on passenger trains or boats carrying passengers; second, to property, except ordinary livestock, received for transportation concerning which the carrier shall have been or shall hereafter be expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, [fol. 34] in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released, and shall not, so far as

relates to values, be held to be a violation of section ten of this act to regulate commerce, as amended; and any tariff schedule which may be filed with the commission pursuant to such order shall contain specific reference thereto and may establish rates varying with the value so declared or agreed upon; and the commission is hereby empowered to make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation. The term 'ordinary livestock' shall include all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses."

Even if the Interstate Commerce Commission was authorized to determine the rates and rules governing this shipment, it would appear from C. M. & St. Paul Ry. Co. vs. McCaull-Dinsmore Co., 253 U. S. 97, 64 Law Ed. 801, that the Supreme Court has held that a carrier shall be liable to the holder of a bill of lading for the full actual loss, damage or injury, notwithstanding any limitation of liability or limitation of the amount of recovery, or any representation or agreement as to value. The shipment in the last cited case was made prior to the amendment of August 9, 1916, heretofore quoted, but we do not see that the amendment so changed the law as to make the decision of the Supreme Court in the decided case inapplicable.

But we do not see that the Interstate Commerce Commission would be authorized, under the state of facts here shown, to establish rates governing shipment in the instant case, but think that such shipment would be governed by the laws of this state and the rules and regulations issued by the State Railroad Commission and the rates established by it. There is no evidence of any discrimination against [fol. 35] interstate commerce by reason of rates sought to be established by the state authorities. Hence we conclude that the issues herein involved must be determined by the state law. Article 708, Rev. Statutes, provides that:

"Railroad companies and other common carriers of goods, wares and merchandise, for hire, within this state, on land or in boats or vessels on the waters entirely within the body of this state, shall not limit or restrict their liability as it exists at common law, by any general or special notice, or by inserting exceptions in the bill of lading or memorandum given upon the receipt of the goods for transportation, or in any other manner whatever, and no special agreement made in contravention of the foregoing provisions of this article shall be valid."

In the absence of proof to the contrary, it will be presumed that the loss of and injury to intrastate shipments was caused by the negligence of the carrier, so that the limitation of liability in the contract is not valid under Article 708. Ry. Co. vs. Maddox & Co., 75 Tex. 300; Ry. Co. vs. Ball, 80 Tex. 602, 16 S. W. 441; Ry. Co. vs. Cox, 221 S. W. 1043; St. L. & S. W. Ry. Co. vs. Morehead, 207 S. W.

336, writ denied. Therefore, the main contention of appellants must be overruled.

Plaintiff below recovered attorney's fees doubtless on the strength of Art. 2178, Rev. Statutes. Suit was filed for $198.00 damages and $20.00 attorney's fees. Judgment was awarded for $208.00. In other words, plaintiff recovered $10.00 less than sued for. Appellees concede that the assignment directed to the error of awarding attorney's fees to plaintiff is well taken, and agree that the judgment may be reformed by subtracting $20.00 from the judgment awarded by the court below. Therefore, we will so reform the judgment, and as reformed, the judgment will be affirmed, with costs of this appeal taxed against the appellees.

R. H. Buck, Associate Justice.

[File endorsement omitted.]

[fol. 36] IN COURT OF CIVIL APPEALS

[Title omitted]

JUDGMENT—January 13, 1923

This cause came on to be heard on the transcript of the record, and the same being inspected, it is the opinion of the court that there was error in the judgment in awarding appellees the attorneys fees sued for, but in other respects there was no error in the judgment. It is therefore, considered, adjudged and ordered that the judgment of the court below be and it is hereby reformed eliminating the sum of twenty dollars attorneys fees as sued for and as reformed the judgment of the trial court is hereby affirmed for the sum of One hundred and eighty-eight dollars. That the appellees, B. W. McCarty, J. T. McCarty, Guy McCarty, Lloyd McCarty, and George Harris, doing business as Cisco Furniture Company, do have and recover of and from the appellants, J. L. Lancaster and Charles L. Wallace, as Receivers of the Texas & Pacific Railway Company, the sum of $188.00, being the amount adjudged below as reformed by this court, together with 6% interest on same from the 20th day of June, 1921. It is further ordered that the appellees, B. W. McCarty, J. T. McCarty, Guy McCarty, Lloyd McCarty and George Harris, doing business as the Cisco Furniture Company, pay all costs incurred by reason of this appeal for which let execution issue, and that this decision be certified below for observance.

[fol. 37] COURT OF CIVIL APPEALS FOR THE SECOND SUPREME JUDICIAL DISTRICT OF TEXAS, AT FORT WORTH

No. 10093

[Title omitted]

APPELLANTS' MOTION FOR REHEARING AND ORDER OVERRULING SAME—Filed Jan. 26, 1923

Come now J. L. Lancaster and Charles L. Wallace, Receivers of the Texas & Pacific Railway, appellants in the above styled and numbered cause, and move the court to vacate, set aside and hold for naught its opinion and judgment heretofore, on the 12th day of January, 1923, rendered, in so far as the failure of this court to sustain appellants' First and Second Assignments of Error is concerned, and to grant them a rehearing for the following, among other reasons apparent of record:

I. The court erred in overruling appellants' First Assignment of Error and related propositions, said assignment of error reading as follows, to-wit:

"The court erred in rendering judgment against defendants for more than $68.00, including $8.00 to cover the cost of repairing plaintiff's three chairs, but exclusive of attorney's fees, it affirmatively appearing from the undisputed evidence that at the time the two rugs (weighing 40 pounds each) alleged to have been damaged in transit were delivered to defendants for transportation from Fort Worth to Cisco, Texas, the shipper endorsed on the shipping contract [fol. 38] covering same a valuation of less than $75.00 per cwt. to secure the benefit of a lower rate of charge provided for transportation thereof under such declaration of value than would otherwise apply, such a lower rate being determined by and provided for in certain classifications and tariffs duly filed with the Interstate Commerce Commission and made effective pursuant to an order of said Interstate Commerce Commission entered in the so-called Shreveport Rate Case, and in compliance with the requirements of said order were made to apply impartially to both intrastate and interstate traffic."

(First Assignment of Error, Tr. p. 16.)

II. The court erred in overruling appellants' Second Assignment of Error and related propositions, which said assignment of errors reads as follows, to-wit:

"It affirmatively appearing from the undisputed evidence that plaintiffs enjoyed the benefit of a lower transportation charge on a certain lot of rugs transported from Fort Worth, Texas, and delivered to them by defendants at Cisco, Texas, than would otherwise have been assessed by reason of the shipper thereof having placed a valuation thereon by means of an endorsement stamped on the shipping contract at the time same were delivered to defendants and such

contract was executed, declaring the valuation of such rugs to be less than $75.00 per cwt., such lower rate being provided for in and determined by certain classifications and tariffs duly filed with the Interstate Commerce Commission in pursuance of its order entered in the so-called Shreveport Rate Case, and applicable impartially to both intrastate and interstate traffic, the court erred in rendering judgment against defendants for more than $68.00, including $8.00 to cover the cost of repairing plaintiff's three chairs, but exclusive of attorneys' fees, it further appearing that two of the rugs included in said shipment, weighing 40 pounds each, were damaged so as to render them practically worthless." Second Assignment of Error, Tr. p. 17.)

[fol. 39] III. The court erred in holding that appellees' shipment of rugs was not subject to and governed by the rules, regulations and practices contained in Western Classification No. 56, R. C. Fyfe's I. C. C. No. 14, particularly with respect to the valuation of not exceeding $75.00 per cwt. placed thereon by the shipper and endorsed on the face of the bill of lading, whereby appellees derived the benefit of a lower freight rate on said shipment than otherwise would have applied, as governed by Items 1, 2 and 3 of the aforesaid Western Classification, and that appellees are not thereby estopped from claiming that said shipment of rugs was of a different and greater value than the valuation so declared by the shipper.

IV. The court erred in holding, in effect, that the action of the Interstate Commerce Commission in requiring the carriers in Texas to put into effect and to apply indifferently as between interstate and intrastate shipments of freight said Western Classification No. 56, R. C. Fyfe's I. C. C. No. 14, did not operate to suspend and render ineffective Article 708, Revised Civil Statutes of Texas of 1911.

Each of the foregoing specifications of error presents a federal question, as likewise do the following propositions of law set forth in the brief for appellants filed herein with particular relation to the First and Second Assignments of Error, as above:

First Proposition of Law

Rates and regulations inaugurated and put into effect by common carriers in compliance with requirements of a lawful order of the Interstate Commerce Commission directing the removal of undue prejudice found to exist whereby unjust discrimination results between interstate and intrastate commerce are binding and enforceable unless and until they are found unlawful by said Interstate [fol. 40] Commerce Commission, and in the absence of such finding must be observed and applied impartially by such carriers with respect to both interstate and intrastate traffic.

Second Proposition of Law

The Interstate Commerce Commission having found undue prejudice to exist in a given locality so as to create unjust discrimination

against interstate commerce and directed the carriers at interest to remove same, all rules and regulations embodied in tariffs and classification filed and put into effect to correct such undue prejudice are binding alike on the public and the carriers affected thereby, and will be enforced and given full effect and recognition by the courts.

Third Proposition of Law

Appellants herein, together with other common carriers of property operating in the State of Texas, having in pursuance of an opinion and competent order of the Interstate Commerce Commission, requiring and directing them to correct and remove from their rates, classifications, rules and regulations then in effect certain specified undue discriminations against and prejudicial to interstate commerce found by said Commission illegally to prevail therein, published and put into effect tariffs, rates and classifications applicable to the movement of freight traffic wholly within the State of Texas as well as to interstate traffic and providing among other things that, upon and in consideration of his declaring in writing that the value thereof does not exceed $75.00 per cwt., a shipper would be accorded the benefit of a lower transportation charge thereon than otherwise would be applicable, such declaration is lawful and is legally binding on said shipper and those for whom he acted in executing the contract of affreightment, so that they and each of them are estopped to assert in case of the loss of or damage to such rugs in course of shipment that the actual value thereof is greater than the declared value by which the owner is enabled to derive the benefit of a reduced transportation charge thereon, or to demand a greater value [fol. 41] of the carrier legally liable for the loss or damage thereto.

Fourth Proposition of Law

It appearing that, in pursuance of an opinion and competent order of the Interstate Commerce Commission requiring and directing appellants and other common carriers to correct and remove from their rates, classifications, rules and regulations then in effect, certain specified undue discriminations against and prejudicial to interstate commerce found by said Commission illegally to prevail therein, said carriers published in their classification relating to shipments of rugs in less than carload quantities a first-class rating applicable to both interstate and intrastate movements where the value of such rugs is agreed or declared in writing not to exceed $75.00 per cwt., and a rating of one and one-half times first class where the value exceeds $75.00 and does not exceed $125.00 per cwt., such declarations or agreements of value being expressly authorized by the Interstate Commerce Act and upheld as to interstate movements by the United States Supreme Court, they are under such circumstances legal and binding upon a shipper of rugs in an intrastate movement, as well as those for whose account he acts, regardless of a state statute purporting to invalidate such declarations or agreements as to value.

Fifth Proposition of Law

Where a conflict arises between a clause in the Constitution of the United States, as interpreted and given application by the courts, and one in a State Constitution as well as the statutes of such State, the former is superior and will override and control the latter to the extent that such conflict may exist.

Sixth Proposition of Law

A state statute purporting and seeking, as interpreted by the courts, to prohibit any agreement between shippers and carriers limiting the value of a shipment in consideration of the granting [fol. 42] of a reduced transportation charge is superseded and rendered nugatory even with respect to intrastate shipments by the publication of optional rates whereby a shipper is given the benefit of a lower rate by stipulating that the value of his shipment is not in excess of a stated amount, such optional rates having been published by said carriers in obedience to a competent order of the Interstate Commerce Commission directing and requiring them to correct and remove certain specified undue discriminations against and prejudicial to interstate commerce found by said commission to exist in their then effective rates, classifications, rules and regulations relating to intrastate traffic.

Seventh Proposition of Law

Since common carriers have a right under the commerce clause of the United States Constitution, as interpreted and given effect by the courts, to enter into an agreement with a shipper of freight, when supported by a reduced rate, that they shall not be liable beyond a stipulated amount in the event of the loss of or damage to such freight, it is unlawful for such carriers to pay more than such stipulated valuation for the loss of or damage to an intrastate shipment of freight governed by tariffs and classifications duly filed in compliance with an order of the Interstate Commerce Commission directing the removal of unjust discrimination found by such Commission to exist as between such intrastate traffic and interstate commerce, the tariffs and classifications in question providing that a reduced rate shall apply on such shipment when a lower shipping value thereof is agreed upon or stipulated in the contract of shipment than that for which the carrier would otherwise be liable in the event of loss or damage, regardless of whether such shipment be interstate or intrastate in character.

Eighth Proposition of Law

It appearing that by a stamped endorsement of the shipper upon [fol. 43] the face of the bill of lading covering the shipment herein involved, he declared the value of the rugs therein listed to be less than $75.00 per 100 pounds, in consequence of which a lower trans-

portation charge was assessed and collected by appellants than would have been applicable under the tariffs and classifications lawfully in effect when the shipment was made, and applicable alike to intrastate and interstate shipments, had the value then been declared to be what it is now claimed then to have been, appellees are now estopped to assert that such rugs (weighing 80 pounds) were of a greater value than that stated by the shipper at the time the shipment was made, and the liability of appellants for the damage they sustained while in course of transportation is limited to the value so declared by the shipper, notwithstanding the existence of Articles 707 and 708, Revised Statutes of 1911, since such optional rates were published and put into effect by appellants and other common carriers in Texas in obedience to a competent order of the Interstate Commerce Commission directing and requiring them to remove from their tariffs and classifications then in effect certain specific discriminations found by said Commission unlawfully to exist against and to be unduly prejudicial to interstate commerce between Shreveport, La., and points in Texas, so that it was error to render judgment herein for more than $60.00 on account of the damage to two rugs, plus $8.00 for the damage to the chairs, and court costs.

Remarks

We doubt that it would be profitable to add any extended comment to what was said with respect to the issues involved in this proceeding, but we do desire in this connection to make one or two brief observations in the light of the reasoning employed by the court in overruling the principal contentions of appellants. For example, the court states in its opinion that it is not seen wherein the issues involved in the cases cited in appellants' brief and relied upon to [fol. 44] sustain their First and Second Assignments of Error are involved herein. It is true that no issue is raised with respect to the specific rates being unreasonable or discriminatory as between interstate and intrastate traffic, but if the position of this court is correct that common carriers in Texas may not limit their liability in consideration of a reduced rate where a shipment moves under a declared or released valuation made by the shipper, the result is that the owner of an interstate shipment is required to pay the maximum transportation charge in order to have the benefit of the unrestricted liability of the carrier whereas, by declaring a lower valuation in compliance with the classification requirements, as was done in this instance, the owner of an intrastate shipment can obtain the benefit of a lower rate of freight and yet, in the event of the loss of or damage to such shipment, he would not be estopped from collecting the actual amount of his damage from the carrier at fault, even though same be in excess of the declared valuation which induced the carrier to transport his shipment for a less charge than he would otherwise have been called on to pay. It seems obvious to us that the direct result of the court's decision is to override a lawful order of the Interstate Commerce Commission within the scope of its juris-

diction, and in consequence to bring about a serious discrimination between interstate and intrastate commerce.

Because of the fact that there was inserted in the bill of lading on which such shipment of rugs was handled no provision or stipulation to the effect that same was subject to the rules, regulations and requirements of the aforesaid Western Classification No. 56, the court apparently takes the view that same cannot properly be binding upon appellees, but there are many decisions which hold that it is not the bill of lading alone which constitutes the contract between the shipper and the carrier, but it is the bill of lading plus the tariffs [fol. 45] and other schedules and regulations filed as prescribed by law, and this is particularly true where same have become effective in pursuance of the order of a competent governmental agency. See Smith vs. Railway Company (N. D), 107 N. W. 56; D'Utassy vs. Southern Pacific Co., 161 N. W. S. 222; American Sugar Refining Co. vs. R. R. Co., 207 Fed. 733, 125 C. C. A. 251; Railway Company vs. Asher, 171 S. W. 1114. While these decisions, in so far as we have had access to the reported opinions, would appear to relate to interstate shipments, we wish to remark that in ordering the railroads of Texas to put into effect and to observe the provisions of the Western Classification with reference to intrastate traffic as well as to interstate commerce, the Interstate Commerce Commission was acting under the authority conferred upon it in the Interstate Commerce Act, and it necessarily follows, we think, that the provisions and regulations of said Western Classification No. 56 must be read into and regarded as a part of the bill of lading on which appellees' shipment of rugs was handled, regardless and irrespective of any stipulations contained in said bill of lading which might be said to be in conflict therewith.

In conclusion, appellants represent that Messrs. Patterson & Sherry, who reside at Cisco, Eastland County, Texas, are attorneys of record for appellees, and that a copy of this motion may be served upon them.

Respectfully submitted, Conner & McRae, Robert Thompson, Attorneys for Appellants. R. S. Shapard, Of Counsel.

[File endorsement omitted.]

[Title omitted]

[fol. 46] This day came on to be heard the motion by appellant for a rehearing in this cause, and the same having been duly considered by the court is hereby overruled.

[fol. 47] IN THE COURT OF CIVIL APPEALS FOR THE SECOND SUPREME JUDICIAL DISTRICT OF TEXAS, AT FORT WORTH

[Title omitted]

ASSIGNMENTS OF ERROR—Filed July 18, 1923

Come now J. L. Lancaster and Charles L. Wallace, Receivers of the Texas & Pacific Railway, plaintiffs in error herein, and respectfully submit that in the record of proceedings, decision and final judgment of the Court of Civil Appears for the Second Supreme Judicial District of Texas in the above entitled matter there is manifest error, to-wit:

I. The Court of Civil Appeals erred in holding that under the provisions of Articles 707 and 708 of the Revised Statutes of Texas the shipper's declaration or agreement as to the value of the rugs shipped to or for account of defendants in error, as endorsed on the face of the shipping contract executed by the shipper and plaintiffs in error, was invalid and unenforceable, and that plaintiffs in error are liable to defendants in error for the full value of the damaged rugs at the time of shipment, less salvage thereon.

II. The Court of Civil Appeals erred in affirming the validity, as applied to the facts of this case, of Article 708, Revised Statutes of [fol. 48] Texas, which declares that no agreement between a shipper and a carrier as to the value of a shipment of goods made in consideration of a reduced transportation charge shall be valid and enforceable, because the enforcement of such statute imposes an improper and undue burden on interstate commerce.

III. The Court of Civil Appeals erred in holding that the agreement between the shipper and the carrier fixing the value of the goods shipped in consideration of a reduced rate was void because contrary to Article 708, Revised Statutes of Texas.

Wherefore, plaintiffs in error, as aforesaid, pray that the judgment of said Court of Civil Appeals be reversed.

Conner & McRae, F. H. Prendergast, George Thompson, Attorneys for Plaintiffs in Error, J. L. Lancaster and Chas. L. Wallace, Receivers as Aforesaid.

[File endorsement omitted.]

[fol. 49] IN THE COURT OF CIVIL APPEALS FOR THE SECOND SUPREME JUDICIAL DISTRICT OF TEXAS, AT FORT WORTH

[Title omitted]

PETITION FOR AND ORDER ALLOWING WRIT OF ERROR

To the Hon. Truman H. Conner, Chief Justice of said Court:

Your petitioners, J. L. Lancaster and Charles L. Wallace, Receivers of the Texas & Pacific Railway, respectfully show that heretofore, to-wit, on the 20th day of June, 1921, there was tried in the County Court at Law of Eastland County, Texas, a case in which B. W. McCarty, J. T. McCarty, Guy McCarty, Lloyd McCarty and George Harris, doing business under the style and firm name of Cisco Furniture Company, were plaintiffs, and your petitioners were defendants, said suit being styled No. 2675, B. W. McCarty et al. vs. J. L. Lancaster et al.

The declaration of plaintiffs in said cause was a petition for the recovery of damages laid in the sum of $198.00, with $20 additional for attorney's fees, by reason of the alleged damage in transit to two rugs and three chairs which it was averred were shipped for account of plaintiffs from Fort Worth, Texas, to Cisco, Texas, over the line of railway operated by defendant Receivers on or about March 13, 1920. Judgment was rendered against the petitioners in said County Court at Law of Eastland County in the sum of $198.00 damages and $20.00 attorney's fees, less a credit of $10.00 for salvage, together with legal interest thereon from the date of judgment, from which judgment your petitioners sued out a writ of error to [fol. 50] the Court of Civil Appeals for the Second Supreme Judicial District of Texas, at Fort Worth, which court on the 13th day of January, 1923, reformed the aforesaid judgment of the County Court at Law of Eastland County, Texas, by eliminating the item of attorney's fees, and thereupon affirmed such judgment in the sum of $188.00.

Thereafter, within the same time required by law, petitioners filed in said Court of Civil Appeals for the Second Supreme Judicial District of Texas their motion for rehearing, which motion for rehearing was by said Court of Civil Appeals duly overruled on the 17th day of February, 1923. In due course petitioners thereupon filed their application for writ of error from the Supreme Court of Texas to said Court of Civil Appeals, which application on the 4th day of April, 1923, was by said Supreme Court of Texas dismissed for want of jurisdiction, following which your petitioners within the time prescribed by law filed in said Supreme Court of Texas their motion for rehearing of their application for writ of error, which latter motion for rehearing was by said Supreme Court of Texas duly overruled on the 25th day of April, 1923.

Your petitioners represent that by analogy to the decision of the Supreme Court in Dignowity vs. Court of Civil Appeals, 110 Tex. 613-17, and to the decision of the Commission of Appeals of Texas,

adopted by said Supreme Court, in the case of Texas Company vs. Chas. Clark & Company, 244 S. W. 995-97, as well as in conformity with the practice of the United States Supreme Court in causes hitherto brought before it on writ of error and otherwise, the time within which such writ may be allowed dates from the final action of the Supreme Court of Texas on the application for writ of error filed therein, to wit, April 25, 1923, although, perforce of the action of said Supreme Court of Texas in dismissing for want of jurisdiction petitioners' application for writ of error in said court, the aforesaid judgment of the Court of Civil Appeals for the Second Supreme Judicial District of Texas thereby became, and was and is, a final [fol. 51] judgment in the highest court of the State of Texas in which a decision in said suit could or can be had.

Your petitioners further show that upon the trial of said cause in the County Court at Law of Eastland County, Texas, and in the review thereof by the Court of Civil Appeals for the Second Supreme Judicial District of Texas, at Fort Worth, on appeal from the judgment of the trial court, as well as in the application for writ of error filed in the Supreme Court of Texas in said cause, there were presented to said courts, and each of them, certain federal questions, to-wit:

I. Whether Articles 707 and 708 of the Revised Statutes of Texas were superseded and nullified by a finding and order of the Interstate Commerce Commission that the classification provisions, regulations and practices theretofore published and observed by the carriers with respect to the movement of traffic within the State of Texas in compliance with the orders of the Railroad Commission of Texas operated to effect an unjust discrimination against interstate Commerce and directing the removal by the carriers of such unjust discrimination, in pursuance of which finding and order the Texas carriers, including your petitioners, and at the direction of said Interstate Commerce Commission, publish for observation within the State of Texas the same classification requirements, regulations and practices that were applicable to the interstate movement of traffic between Texas points and points in other states, wherein it was stipulated and provided, among other things, that where a shipper of rugs declares or agrees in writing that the value thereof is not in excess of $75.00 per one hundred pounds a lower charge for the transportation of such commodity will be made than if a higher value is declared or agreed upon, an agreement of such character having been declared by the United States Supreme Court to be legal and in all things binding upon both the shipper and the carrier in respect of interstate commerce, whereas the aforesaid Arti- [fol. 52] cles 707 and 708, Revised Statutes of Texas, as interpreted by the Supreme Court of Texas, renders null and void any attempted agreement between a shipper and a carrier purporting to limit the liability of the carrier to an agreed or stipulated amount less than the true value of the property transported in the event of the loss of or damage to same in transit.

II. Whether a State statute which, as interpreted by the Supreme Court of such state, operates to render null and void an attempted agreement between a shipper and carrier that, in consideration of a reduced transportation charge, the carrier's liability for damage to or loss of a shipment of rugs shall be limited to a stipulated value declared or agreed upon in writing is superseded and nullified by a competent order of the Interstate Commerce Commission finding that the classification requirements and regulations theretofore published by the carriers in consonance with the laws of such states and the orders of the constituted authorities thereof effect an unjust discrimination against interstate commerce, and directing that the carriers remove such unjust discriminiation by publishing and appying to the transportation of property between points in such State the provisions of the classification applicable at the time such transportation takes place to the interstate transportation of property between points in such state and in other states, such interstate classification, with the sanction of the United States Supreme Court, permitting the shipment of rugs and other commodities in consideration of a reduced transportation charge on an agreement as to the value thereof binding on both the shipper and the carrier.

III. Your petitioners further show that a federal question was made in said cause, to-wit, as hereinbefore set out, that the aforesaid judgment of said Court of Civil Appeals for the Second Supreme Judicial District of Texas was repugnant to and in conflict with [fol. 53] the commerce clause of the constitution of the United States, and that a decision of said federal question was necessary to the judgment rendered, and in such decision the validity of the aforesaid statutes of the State of Texas was affirmed and sustained by said Court of Civil Appeals.

IV. Your petitioners further show that a federal question was made in said cause, to wit, that there was claimed a title, right, privilege and immunity under and by virtue of the constitution of the United States, and of laws enacted by the Congress in furtherance thereof, and in particular the Interstate Commerce Act, as amended, and the lawful orders and requirements of the Interstate Commerce Commission issued and promulgated thereunder, and there was drawn into question the construction and application of certain lawful orders and requirements of said Interstate Commerce Commission, and the decision and judgment of the aforesaid Court of Civil Appeals for the Second Supreme Judicial District of Texas was against the said title, right, privilege and immunity claimed by these petitioners thereunder, and that a decision of said federal question was necessary to the judgment rendered by said Court of Civil Appeals,

Wherefore, your petitioners present herewith an exemplified transcript of the record of the Court of Civil Appeals for the Second Supreme Judicial District of Texas in said cause, as well as of the record of the Supreme Court of Texas in respect of petitioners' application for writ of error to review the judgment of said Court of Civil Ap-

peals therein, and pray that a writ of error to said Court of Civil Appeals be allowed; that a citation be granted and signed; that such citation be directed to the aforesaid B. W. McCarty, J. T. McCarty, Guy McCarty, Lloyd McCarty and George Harris, as partners doing business under the style and firm name of Cisco Furniture Com-[fol. 54] pany; that the bond herewith presented be approved, and that upon compliance with the terms of the statute in such cases made and provided said bond and writ of error may operate as a supersedeas, to the end that the errors complained of may be reviewed in the Supreme Court of the United States and the judgment aforesaid of said Court of Civil Appeals for the Second Supreme Judicial District of Texas be corrected and judgment thereupon entered in accordance with law.

(Signed) J. L. Lancaster and Chas. L. Wallace, Receivers, the Texas & Pacific Ry. F. H. Prendergast, George Thompson, Attorneys and Counsel for Petitioners.

[fol. 55] Jurat showing the foregoing was duly sworn to by Robert and George Thompson omitted in printing.

Granted this 21st day of July, 1923, the writ of error to operate as a supersedeas, and the bond for that purpose is fixed at the sum of $600.00.

Dated at Fort Worth, Texas, this 21st day of July, 1923.

(Signed) T. H. Conner, Chief Justice Court of Civil Appeals for the 2nd Supreme Judicial District of Texas.

[fols. 56 & 57] [Title omitted]

WRIT OF ERROR BOND FOR $600.00—Approved July 23, 1923; omitted in printing

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[fol. 58] IN THE COURT OF CIVIL APPEALS FOR THE SECOND SUPREME JUDICIAL DISTRICT OF TEXAS, AT FORT WORTH

[Title omitted]

WRIT OF ERROR—Filed July 24, 1923

THE UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the Judges of the Court of Civil Appeals for the Second Supreme Judicial District of Texas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said Court of Civil Appeals for the Second Supreme Judicial District of the State of Texas, before

you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between J. L. Lancaster and Charles L. Wallace, Receivers of the Texas & Pacific Railway, plaintiffs in error, and B. W. McCarty, J. T. McCarty, Guy McCarty, Lloyd McCarty and George Harris, doing business as partners under the style and firm name of Cisco Furniture Company, defendants in error, wherein was drawn in question the validity of certain statutes of the State of Texas alleged to be repugnant to and in conflict with the commerce clause of the constitution of the United States and of laws enacted by the Congress in furtherance thereof, and the decision was in favor of the validity of said statutes, and wherein was further drawn in question the validity of an authority exercised under the United States, and the decision was against the validity of such authority, and manifest error hath appeared, to the great damage of the said J. L. Lancaster and Charles L. Wallace, Receivers as aforesaid, as by their complaint appears:

[fol. 59] We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 18th day of August, 1923, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable William Howard Taft, Chief Justice of the United States, on the 23rd day of July in the Year of our Lord one thousand nine hundred and twenty-three.

Issued the 23rd day of July, 1923.

Louis C. Maynard, Clerk of the United States District Court for the Northern District of Texas, By G. B. Buckley, Deputy. [The Seal of the U. S. District Court, Northern Dist. Texas, Fort Worth.]

Allowed by T. H. Conner, Chief Justice of the Court of Civil Appeals for the Second Supreme Judicial District of Texas.

A copy of this original writ of error is this day lodged with the clerk for the use of the defendants in error.

This 23rd day of July, 1923.

Louis C. Maynard, Clerk United States District Court for the Northern District of Texas, By G. B. Buckley, Deputy. [The Seal of the U. S. District Court, Northern Dist. Texas, Fort Worth.]

[fol. 59½] [File endorsement omitted.]

[fol. 60] [Title omitted]

CITATION IN ERROR—Filed July 30, 1923; omitted in printing

I hereby accept service of the within citation, and acknowledge receipt of copy of the same.

This the 28th day of July, 1923.

Patterson & Sherry, B. W. Patterson, Dean Sherry, For B. W. McCarty, J. T. McCarty, Guy McCarty, Lloyd McCarty, and George Harris, Defendants in Error.

[fol. 60½] [File endorsement omitted.]

[fol. 61] BILL FOR COSTS—Omitted in printing

[fol. 62] STATE OF TEXAS,
County of Tarrant:

CLERK'S CERTIFICATE

I, J. A. Scott, Clerk of the Court of Civil Appeals for the Second Supreme Judicial District of Texas, at Fort Worth, hereby certify that the within and foregoing 61 pages (except pages 58 and 59 and page 60) contain a true and correct copy of a transcript of the record of all the proceedings had in the County Court at Law of Eastland County, Texas, and in the Court of Civil Appeals for the Second Sureme Judicial District of Texas, as the same appear of record and on file in this office in Cause No. 10093, J. L. Lancaster et al., Plaintiffs in Error, vs. B. W. McCarty, Defendants in Error.

I further certify that the pages herein numbered 58 and 59 constitute the original writ of error, of which a copy has been lodged and is now on file in this office, and that the page herein numbered 60 is the original citation in error and acceptance of service, of which a copy is now on file in this office.

In testimony whereof, I have hereunto affixed my signature, with the seal of the Court of Civil Appeals for the Second Supreme Judicial District of Texas, at Fort Worth, this the 31st day of July, A. D. 1923.

J. A. Scott, Clerk. [Seal of the Court of Civil Appeals of the State of Texas.]

[fol. 63] **Supreme Court of the State of Texas**

[Title omitted]

PETITION FOR WRIT OF ERROR—Filed in Court of Civil Appeals March 17, 1923; Filed in Supreme Court March 22, 1923

To the Supreme Court of Texas:

Your petitioners, J. L. Lancaster and Charles L. Wallace, Receivers of the Texas & Pacific Railway, respectfully make application to the Honorable Supreme Court of Texas for a writ of error herein to the Court of Civil Appeals for the Second Supreme Judicial District, sitting at Forth Worth, and pray that a writ of error be granted in this cause on account of manifest errors of record committed by said Court of Civil Appeals, and that upon hearing hereof the judgments of that court and of the trial court be set aside, and that judgment be rendered by this Honorable Court in favor of defendants in error in a sum of not in excess of $68.00.

Grounds of Jurisdiction

1. It is the contention of plaintiffs in error herein that, perforce of the orders entered by the Interstate Commerce Commission in the so-called Shreveport Rate Case, whereby the rail carriers in Texas were required to publish and put into effect with respect to shipments of freight between points in Texas the rules and regulations [fol. 64] prescribed in the then current Western Classification, among which rules and regulations is a provision to the effect that rugs shipped on a declared or agreed valuation of not exceeding $75.00 per hundred pounds will take a classification rating of first class, whereas a higher rate is provided if a greater valuation is declared or agreed upon, such orders being in force and effect at the time the shipment of rugs and other articles involved in this suit was made, Article- 707 and 708, Revised Statutes of 1911, as heretofore interpreted by the courts, are superseded and do not legally control or affect the measure of the carriers' liability in respect of a shipment of rugs between points in the state of Texas where the shipper has declared the valuation thereof not to be in excess of $75.00 per hundred pounds, in consequence of which the owner of the shipment derives the benefit of a lower transportation charge thereon than would otherwise be collected. The effect of the foregoing contention is to bring directly into issue in this proceeding the validity of the aforesaid articles of the Revised Statutes, and in particular Article 708, which the lower courts have held rendered nugatory the declaration endorsed on the bill of lading covering the shipment of rugs to defendants in error, so as to make the carriers liable for the full actual loss sustained.

2. In holding that the orders of the Interstate Commerce Commission directing that the provisions of the then current Western Clas-

sification be applied to shipments of freight between points in Texas in like manner as to interstate shipments did not operate to supersede or nullify Article 708, Revised Statutes of 1911, the Court of Civil Appeals in its decision in this case committed an error of such importance to the jurisprudence of the state as to confer jurisdiction [fol. 65] upon this court to grant this application, and upon hearing of the case to correct the error so committed by the Court of Civil Appeals, this action being one in which the jurisdiction of the Court of Civil Appeals is not final under Article 1591, Revised Statutes of 1911, inasmuch as the validity of a statute is brought in issue.

First Specification of Error (Submitted as a Proposition of Law)

The Court of Civil Appeals erred in overruling appellants' First Assignment of Error and related propositions, said assignments of error reading as follows, to wit:

"The court erred in rendering judgment against defendants for more than $68.00, including $8.00 to cover the cost of repairing plaintiff's three chairs, but exclusive of attorney's fees, it affirmatively appearing from the undisputed evidence that at the time the two rugs (weighing 40 pounds each) alleged to have been damaged in transit were delivered to defendants for transportation from Fort Worth to Cisco, Texas, the shipper endorsed on the shipping contract covering same a valuation of less than $75.00 per cwt. to secure the benefit of a lower rate or charge provided for transportation thereof under such declaration of value than would otherwise apply, such lower rate being determined by and provided for in certain classifications and tariffs duly filed with the Interstate Commerce Commission and made effective pursuant to an order of said Interstate Commerce Commission entered in the so-called Shreveport Rate Case, and in compliance with the requirements of said order were made to apply impartially to both intrastate and interstate traffic." (First Assignment of Error, Tr. p. 16; appellants' brief on appeal, pps. 4-5; appellants' motion for rehearing, p. 1.

Second Specification of Error (Submitted as a Proposition of Law)

The Court of Civil Appeals erred in overruling appellants' Second Assignment of Error and related propositions, which said assignment of error reads as follows, to wit:

"It affirmatively appearing from the undisputed evidence that plaintiffs enjoyed the benefit of a lower transportation charge on a certain lot of rugs transported from Fort Worth, Texas, and delivered to them by defendants at Cisco, Texas, than would otherwise have been assessed by reason of the shipper thereof having placed a valuation thereon by means of an endorsement stamped on the shipping contract at the time same were delivered to defendants and such contract was executed, declaring the valuation of such rugs to be [fol. 66] less than $75.00 per cwt., such lower rate being provided for in and determined by certain classifications and tariffs duly

filed with the Interstate Commerce Commission in pursuance of its order entered in the so-called Shreveport Rate Case, and applicable impartially to both intrastate and interstate traffic, the court erred in rendering judgment against defendants for more than $68.00, including $8.00 to cover the cost of repairing plaintiff's three chairs, but exclusive of attorney's fees, it further appearing that two of the rugs included in said shipment, weighing 40 pounds each, were damaged so as to render them practically worthless." (Second Assignment of Error, Tr. p. 17; appellants' brief on appeal, pp. 5-6; appellants' motion for rehearing p. 2.)

Third Specification of Error (Submitted as a Proposition of Law)

The Court of Civil Appeals erred in holding that appellees' shipment of rugs was not subject to and governed by the rules, regulations and practices contained in Western Classification No. 56, R. C. Fyfe's I. C. C. No. 14, particularly with respect to the valuation of not exceeding $75.00 per cwt. placed thereon by the shipper and endorsed on the face of the bill of lading, whereby appellees derived the benefit of a lower freight rate on said shipment than otherwise would have applied, as governed by Items 1, 2 and 3 of the aforesaid Western Classification, and that appellees are not thereby estopped from claiming that said shipment of rugs was of a different and greater value than the valuation so declared by the shipper. (Third Assignment of Error in appellants' motion for rehearing, p. 2.)

Fourth Specification of Error (Submitted as a Proposition of Law)

The Court of Civil Appeals erred in holding, in effect, that the action of the Interstate Commerce Commission in requiring the carriers in Texas to put into effect and to apply indifferently as between interstate and intrastate shipments of freight said Western Classification No. 56, R. C. Fyfe's I. C. C. No. 14, did not operate to suspend and render ineffective Article 708, Revised Civil Statutes of Texas of 1911. (Fourth Assignment of Error in appellants' motion for rehearing, pp. 2-3.)

[fol. 66½] Each of the foregoing specifications of error presents a federal question, as likewise do the following propositions of law set forth in the brief for appellants filed herein with particular relation to the First and Second Assignments of Error, as above.

First Proposition of Law

Rates and regulations inaugurated and put into effect by common carriers in compliance with requirements of a lawful order of the Interstate Commerce Commission directing the removal of undue prejudice found to exist whereby unjust discrimination results between interstate and intrastate commerce are binding and enforceable unless and until they are found unlawful by said Interstate Commerce Commission, and in the absence of such finding must be

observed and applied impartially by such carriers with respect to both interstate and intrastate traffic.

Second Proposition of Law

The Interstate Commerce Commission having found undue prejudice to exist in a given locality so as to create unjust discrimination against interstate commerce and directed the carriers at interest to remove same, all rules and regulations embodied in tariffs and classifications filed and put into effect to correct such undue prejudice are binding alike on the public and the carriers affected thereby, and will be enforced and given full effect and recognition by the courts.

Third Proposition of Law

Appellants herein, together with other common carriers of property operating in the State of Texas, having in pursuance of an opinion and competent order of the Interstate Commerce Commission, requiring and directing them to correct and remove from their rates, classifications, rules and regulations then in effect certain specified undue discriminations against and prejudicial to interstate commerce found by said Commission illegally to prevail therein, published and put into effect tariffs, rates and classifications applicable to the movement of freight traffic wholly within the State of Texas as well as to interstate traffic and providing among other things that, upon and in consideration of his declaring in writing that the value thereof does not exceed $75.00 per cwt., a shipper would be accorded the benefit of a lower transportation charge thereon than otherwise would be applicable, such declaration is lawful and is legally binding on said shipper and those for whom he acted in executing the contract of affreightment, so that they and each of them are estopped to assert in case of a loss of damage to such rugs in course of shipment that the actual value thereof is greater than the declared value by which the owner is enabled to derive the benefit of a reduced transportation charge thereon, or to demand a greater value of the carrier legally liable for the loss or damage thereto.

[fol. 67] Fourth Proposition of Law

It appearing that, in pursuance of an opinion and competent order of the Interstate Commerce Commission requiring and directing appellants and other common carriers to correct and remove from their rates, classifications, rules and regulations then in effect, certain specified undue discriminations against and prejudicial to interstate commerce found by said Commission illegally to prevail therein, said carriers published in their classification relating to shipments of rugs in less than carload quantities a first-class rating applicable to both interstate and intrastate movements where the value of such rugs is agreed or declared in writing not to exceed $75.00 per cwt., and a rating of one and one-half times first class where the value exceeds $75.00 and does not exceed $125.00 per cwt., such declarations or

agreements of value being expressly authorized by the Interstate Commerce Act and upheld as to interstate movements by the United States Supreme Court, they are under such circumstances legal and binding upon a shipper of rugs in an intrastate movement, as well as those for whose account he acts, regardless of a state statute purporting to invalidate such declarations or agreements as to value.

Fifth Proposition of Law

Where a conflict arises between a clause in the Constitution of the United States, as interpreted and given application by the courts, and one in a State Constitution as well as the statutes of such State, the former is superior and will override and control the latter to the extent that such conflict may exist.

Sixth Proposition of Law

A state statute purporting and seeking, as interpreted by the courts, to prohibit any agreement between shippers and carriers limiting the value of a shipment in consideration of the granting of a reduced transportation charge is superseded and rendered nugatory even with respect to intrastate shipments by the publication of optional rates whereby a shipper is given the benefit of a lower rate by stipulating that the value of his shipment is not in excess of a stated amount, such optional rates having been published by said carriers in obedience to a competent order of the Interstate Commerce Commission directing and requiring them to correct and remove certain specified undue discriminations against and prejudicial to interstate commerce found by said Commission to exist in their then effective rates, classifications, rules and regulations relating to intrastate traffic.

Seventh Proposition of Law

Since Common carriers have a right under the commerce clause of the United States Constitution, as interpreted, and given effect by the courts, to enter into an agreement with a shipper of freight, when supported by a reduced rate, they shall not be liable beyond a stipulated amount in the event of the loss of or damage to such freight, it is unlawful for such carriers to pay more than such stipulated valuation for the loss of or for damage to an intrastate shipment of freight governed by tariffs and classifications duly filed in compli-[fol. 68] ance with an order of the Interstate Commerce Commission directing the removal of unjust discrimination found by such Commission to exist as between such intrastate traffic and interstate commerce, the tariffs and classifications in question providing that a reduced rate shall apply on such shipment when a lower shipping value thereof is agreed upon or stipulated in the contract of shipment than that for which the carrier would otherwise be liable in the event of loss or damage, regardless of whether such shipment be interstate or intrastate in character.

Eighth Proposition of Law

It appearing that by a stamped endorsement of the shipper upon the face of the bill of lading covering the shipment herein involved, he declared the value of the rugs therein listed to be less than $75.00 per 100 pounds, in consequence of which a lower transportation charge was assessed and collected by appellants than would have been applicable under the tariffs and classifications lawfully in effect when the shipment was made, and applicable alike to intrastate and interstate shipments, had the value then been declared to be what it is now claimed then to have been, appellees are now estopped to assert that such rugs (weighing 80 pounds) were of a greater value than that stated by the shipper at the time the shipment was made, and the liability of appellants for the damage they sustained while in course of transportation is limited to the value so declared by the shipper, notwithstanding the existence of Articles 707 and 708, Revised Statutes of 1911, since such optional rates were published and put into effect by appellants and other common carriers in Texas in obedience to a competent order of the Interstate Commerce Commission directing and requiring them to remove from their tariffs and classifications then in effect certain specific discriminations found by said Commission unlawfully to exist against and to be unduly prejudicial to interstate commerce between Shreveport, La., and points in Texas, so that it was error to render judgment herein for more than $60.00 on account of the damage to two rugs, plus $8.00 for the damage to the chairs, and court costs.

Statement

Inasmuch as the entire agreed statement of facts upon which this case was tried is substantially set out in the opinion handed down by the Court of Civil Appeals, and hence will be noticed and considered, under the rules of this court governing the preparation of applications for writs of error, without being incorporated in the application, we will not burden the court with a repetition of the facts.

Remarks

The reasons actuating plaintiffs in error in resisting the payment of a greater amount in settlement of the loss and damage sustained by defendants in error than that based upon the declared valua-[fol. 69] tion of the rugs, so far as that item is concerned, are fully presented in the argument embodied in the brief for appellants filed in the Court of Civil Appeals, pages 12-26, and in their motion for rehearing subsequently filed therein, pages 5-7, of which the consideration by this court is respectfully asked.

Respectfully submitted, (Signed) Conner & McRae, Robert Thompson. R. S. Shapard, Of Counsel.

[File endorsement omitted.]

Supreme Court of the State of Texas

App. No. 12941

LANCASTER & WALLACE, Receivers,

vs.

B. W. McCARTY

(From Eastland County, Second District)

ORDER OF SUPREME COURT OF TEXAS DISMISSING APPLICATION FOR WRIT OF ERROR FOR WANT OF JURISDICTION

April 4th, 1923.

This day came on to be heard the application of plaintiffs in error for a writ of error to the Court of Civil Appeals for the Second District and the same having been duly considered it is ordered that the application be dismissed for want of jurisdiction; that applicants, Lancaster & Wallace, Receivers, and sureties, E. J. Garner, Jr., and Ray Nesbitt, Jr., pay all costs incurred on this application.

[fol. 70] SUPREME COURT OF THE STATE OF TEXAS

[Title omitted]

MOTION FOR REHEARING OF PETITION FOR WRIT OF ERROR—Filed April 18, 1923

To the Supreme Court of Texas:

Come now your petitioners, J. L. Lancaster and Charles L. Wallace, Receivers of the Texas & Pacific Railway, and respectfully move that the court set aside its order on the 4th day of April, 1923, entered, whereby the petition for writ of error filed by these petitioners in the above numbered and entitled cause was dismissed on the ground that this court is without jurisdiction over the matters in controversy therein presented, and in support of such motion they submit the following

Assignments of Error

1. This court erred in dismissing said petition for writ of error and in holding that it is without jurisdiction over the matters in controversy for the reason that there is directly brought in issue the validity of Articles 707 and 708 of the Revised Statutes of 1911, as is shown in the first paragraph of the "Ground of Jurisdiction" and as is charged in the First, Second, Third and Fourth Specifications of [fol. 71] Error assigned in said petition for writ of error herein,

and in Article 1521 of said Revised Statutes of 1911 it is expressly provided that this court is vested with appellate jurisdiction over cases in which there is involved the construction or the validity of statutes, and under Article 1544 of said Revised Statutes of 1911, as amended by Acts of 1913 and Acts of 1917, it is provided, in effect, that this court shall grant a writ of error in any cause wherein it is given jurisdiction.

2. This court erred in dismissing said petition for writ of error and in holding that it is without jurisdiction over the matters in controversy submitted therein for the reason that in the second paragraph of the "Grounds of Jurisdiction" stated therein and in the First, Second, Third and Fourth Specifications of Error therein presented it was demonstrated that in the judgment rendered by the Court of Civil Appeals herein there was committed an error of such importance to the jurisprudence of the state as to confer upon this court jurisdiction over the matters in controversy before said Court of Civil Appeals.

Statement

In the petition for writ of error filed herein, there was assigned the following grounds of jurisdiction:

1. It is the contention of plaintiffs in error herein that, perforce of the orders entered by the Interstate Commerce Commission in the so-called Shreveport Rate Case, whereby the rail carriers in Texas were required to publish and put into effect with respect to shipments of freight between points in Texas the rules and regulations prescribed in the then current Western Classification, among which rules and regulations is a provision to the effect that rugs shipped on a declared or agreed valuation of not exceeding $75.00 per hundred pounds will take a classification rating of first class, whereas a higher rate is provided if a greater valuation is declared or agreed upon, such order being in force and effect at the time the shipment of rugs and [fol. 72] other articles involved in this suit was made, Article 707 and 708, Revised Statutes of 1911, as heretofore interpreted by the courts, are superseded and do not legally control or affect the measure of the carriers' liability in respect of a shipment of rugs between points in the state of Texas where the shipper has declared the valuation thereof not to be in excess of $75.00 per hundred pounds, in consequence of which the owner of the shipment derives the benefit of a lower transportation charge thereon than would otherwise be collected. The effect of the foregoing contention is to bring directly into issue in this proceeding the validity of the aforesaid articles of the Revised Statutes, and in particular Article 708, which the lower courts have held rendered nugatory the declaration endorsed on the bill of lading covering the shipment of rugs to defendants in error, so as to make the carriers liable for the full actual lose sustained.

2. In holding that the orders of the Interstate Commerce Commission directing that the provisions of the then current Western Classification be applied to shipments of freight between points in

Texas in like manner as to interstate shipments did not operate to supersede or nullify Article 708, Revised Statutes of 1911, the Court of Civil Appeals in its decision in this case committed an error of such importance to the jurisprudence of the state as to confer jurisdiction upon this court to grant this application, and upon hearing of the case to correct the error so committed by the Court of Civil Appeals, this action being one in which the jurisdiction of the Court of Civil Appeals is not final under Article 1591, Revised Statutes of 1911, inasmuch as the validity of a statute is brought in issue.

There were also presented in said petition for writ of error the following specifications of error:

1. The Court of Civil Appeals erred in overruling appellants' First Assignment of Error and related propositions, said assignment of error reading as follows, to wit:

[fol. 73] "The court erred in rendering judgment against defendants for more than $68.00, including $8.00 to cover the cost of repairing plaintiff's three chairs, but exclusive of attorney's fees, it affirmatively appearing from the undisputed evidence that at the time the two rugs (weighing 40 pounds each) alleged to have been damaged in transit were delivered to defendants for transportation from Fort Worth to Cisco, Texas, the shipper endorsed on the shipping contract covering same a valuation of less than $75.00 per cwt. to secure the benefit of a lower rate or charge provided for transportation thereof under such declaration of value than would otherwise apply, such lower rate being determined by and provided for in certain classifications and tariffs duly filed with the Interstate Commerce Commission and made effective pursuant to an order of said Interstate Commerce Commission entered in the so-called Shreveport Rate Case, and in compliance with the requirements of said order were made to apply impartially to both intrastate and interstate traffic." (First Assignment of Error, Tr. p. 16; appellants' brief on appeal, pp. 4-5; appellants' motion for rehearing, p. 1).

2. The Court of Civil Appeals erred in overruling appellants' Second Assignment of Error and related propositions, which said assignment of error reads as follows, to wit:

"It affirmatively appearing from the undisputed evidence that plaintiffs enjoyed the benefit of a lower transportation charge on a certain lot of rugs transported from Fort Worth, Texas, and delivered to them by defendants at Cisco, Texas, than would otherwise have been assessed by reason of the shipper thereof having placed a valuation thereon by means of an endorsement stamped on the shipping contract at the time same were delivered to defendants and such contract was executed, declaring the valuation of such rugs to be less than $75.00 per cwt., such lower rate being provided for in and determined by certain classifications and tariffs duly filed with the Interstate Commerce Commission in pursuance of its order entered in the so-called Shreveport rate case, and applicable impartially to both

intrastate and interstate traffic, the court erred in rendering judgment against defendants for more than $68.00, including $8.00 to cover the cost of repairing plaintiff's three chairs, but exclusive of attorney's fees, it further appearing that two of the rugs included in said shipment, weighing 40 pounds each, were damaged so as to render them practically worthless." (Second Assignment of Error, Tr. p. 17; appellants' brief, on appeal, pp. 5-6; appellants' motion for rehearing p. 2).

3. The Court of Civil Appeals erred in holding that appellees' shipment of rugs was not subject to and governed by the rules, regulations and practices contained in Western Classification No. 56, R. C. Fyfe's I. C. C. No. 14, particularly with respect to the valuation of not exceeding $75.00 per cwt. placed thereon by the shipper and [fol. 74] endorsed on the face of the bill of lading, whereby appellees derived the benefit of a lower freight rate on said shipment than otherwise would have applied, as governed by Items 1, 2 and 3 of the aforesaid Western Classification, and that appellees are not thereby estopped from claiming that said shipment of rugs was of a different and greater value than the valuation so declared by the shipper. (Third Assignment of Error in appellants' motion for rehearing, p. 2.)

4. The Court of Civil Appeals erred in holding, in effect, that the action of the Interstate Commerce Commission in requiring the carriers in Texas to put into effect and to apply indifferently as between interstate and intrastate shipments of freight said Western Classification No. 56, R. C. Fyfe's I. C. C. No. 14, did not operate to suspend and render ineffective Article 708, Revised Civil Statutes of Texas of 1911. (Fourth Assignment of Error in appellants' motion for rehearing, pp. 2-3.)

Each of the foregoing specifications of error presents a federal question, as likewise do the Propositions of Law submitted in connection therewith, both in said petition for writ of error and under the appropriate assignments of error in the Brief for Appellants filed in the Court of Civil Appeals.

Argument

Believing that this honorable court has not fully grasped the issues sought to be raised by petitioners in this proceeding nor appreciated adequately the significance and far-reaching effect of the bearing which the respective decisions of the Interstate Commerce Commission and of the United States Supreme Court in the so-called Shreveport Case and related decisions referred to in appellants' brief filed in the Court of Civil Appeals in this case, we desire at this time to urge upon the court the following additional reasons why it should assume jurisdiction over this case and place same upon its regular docket for argument and consideration in due course. It is rec- [fol. 75] ognized by petitioners that this court has heretofore, as well as the other appellate courts in this state, uniformly held that

the effect of Articles 707 and 708 of the Revised Statutes of 1911 is to preclude a common carrier from limiting the amount of its liability for the loss of or damage to a shipment of freight while in its possession where such loss or damage is shown to have resulted from its negligence, but we shall proceed to point out there is likewise another line of decisions in which it is declared that a shipper may be chargeable with such fraud against the carrier as to stop him, in effect, from relying upon the legal rights accruing to him under the decision of this court in Railway Company vs. Maddox & Co., 75 Tex., 30, and other cases cited in the opinion of the Court of Civil Appeals herein. By reference to these cases, however, it will be seen, at least by inference if not expressly so stated, that the shipper or owner sought to be held under the contract of shipment to the stipulation therein declaring that the carrier should not be liable in the event of loss or damage beyond a stated valuation was afforded no liberty of contract in the matter of executing such agreement. This stipulation was embodied in the carrier's standard form of bill of lading or contract of affreightment, and any shipper desiring to have his property transported by such carrier was obliged to execute the form of bill of lading presented to him with such stipulation embodied therein or else to forego the movement of his effects altogether, unless of course it were possible to arrange for the handling by private conveyance or otherwise. However, there was subsequently devised and incorporated by the carriers in their bills of lading, tariffs and other publications, a more enlightened and practical arrangement whereby it was recognized that there are different grades and values of commodities, and even of a particular commodity, and in order to facilitate the movement of the cheaper grades of various commodities it was recognized that the carriers could afford to transport same on a reduced basis of transportation charges than otherwise [fol. 76] where the shipper is permitted voluntarily to declare or agree with the carrier that the value of such commodity or commodities does not exceed a stipulated amount, beyond which the liability of the carrier would not exist in the event of any loss or damage thereto occurring while in course of transportation, the shipper at the same time being privileged, by paying a higher freight rate, to receive from the carrier a bill of lading under which he would be able to hold the latter liable for the full amount of any damage he might sustain by reason of the negligence of the carrier in handling such shipment. As stated above, the previous decisions of this court related to shipments which were made at a time when the shipper was not allowed any option in the matter of declaring a limited value with the object of obtaining a reduced freight rate or of paying a higher charge carrying with it the right to hold the carrier for full responsibility for any loss or damages sustained, or at least if such option was afforded the shipper it apparently was not considered or passed upon by the court, but there is another line of decision, beginning with R. R. Co. vs. Burke, 55 Tex. 323, in which it is held that a shipper may practice such fraud upon the carrier by concealment, misrepresentation, or otherwise, as to preclude him from relying upon the common law liability of the carrier

for its negligence. See also Express Company vs. Pitman, 71 S. W. 312; Express Company vs. Scott, 2 Willson's Civ. Cas, sec. 74. The Burke case was a suit for $28,403.56 on account of the loss and destruction of certain paintings, jewelry, etc., contained in a shipment of household effects from New Orleans to Austin, Texas. In reversing a default judgment rendered against the defendant carriers, the court, speaking through Mr. Justice Gould, stated that it was not considered that the statutory provision denying carriers the right to limit their common law liability "in any wise restricts the operation of the common law rule that where the shipper of valuables practices a fraud on the carrier, either by his acts or omissions, fraudulently concealing the value of the articles shipped, the carrier [fol. 77] is discharged." While this was an interstate movement, same occurred long before Congress passed any statute relating to limitations of liability, so that the state laws then had as much bearing upon the carrier's liability as if it had been purely an intrastate shipment.

Now, it is specifically stipulated in the agreed statement of facts in this case that, in order to obtain the benefit of the reduced freight rate resulting therefrom, the shipper placed on the face of the bill of lading a stamped endorsement reading "Valuation on rugs less than $75.00 per 100 pounds." Under the applicable tariff and classification provisions a higher transportation charge than that collected on the shipment would have accrued to the carriers had this endorsement not been made, in consequence of which they would unquestionably have been liable to the owner of the shipment for the full amount of the loss sustained thereon by reason of the damage suffered by the rugs while in transit, but there is nothing in the record showing the carriers had any knowledge whatever that the value of the rugs, as is now claimed, was in fact greater than was represented by the shipper for the purpose of obtaining the benefit of the lower freight charge. Because of this fact it is submitted that this case should be governed by the court's decision in the Burke case rather than by the holding in the Maddox decision. In other words, the action of the shipper in making the representation to the carrier that the value of this shipment was less than what is now asserted to have been the real value brings this case within the holding in the Burke decision that a fraudulent misrepresentation was made to the carriers whereby they were misled to their detriment, and we accordingly earnestly urge that the court reconsider its action in dismissing petitioners' application for writ of error herein and thereupon to take jurisdiction of this case and place same upon its docket for argument and decision at such time as may be fixed by the court, [fol. 78] this being asked not only on the ground that the construction of validity of a statute is involved, but also for the reason that the wisdom of the principle contended for herein by petitioners had heretofore received the express sanction of the Congress and the Supreme Court of the United States with respect to interstate shipments of freight, and is of the utmost importance to the jurisprudence of this state by reason of the almost countless number of shipments in which the issues herein involved are constantly arising

in connection with intra-state shipments of freight in Texas. If the decision of the Court of Civil Appeals herein is to be held to be the last work on the law in this state, the logical and necessary result will be that the carriers will be obliged to collect on all shipments of freight between points in Texas the maximum freight charges applying where the liability of the carrier for loss or damage is unrestricted, and no shipper can be given the privilege of shipping his goods at a reduced rate of freight by declaring the value thereof not to exceed a stipulated amount, even though in truth and in fact such amount actually represents the value thereof, since the carriers could not afford, under the interpretation placed upon the statutes by the Court of Civil Appeals in this case, to rely upon the truth of such representation on the part of the shipper. So long as they suffer no loss or damage with respect to their goods, shippers find it greatly to their advantage to obtain the benefit of the lower rates they get by declaring a limited value on their shipments, but whenever there arises a claim for loss or damage thereon they promptly assert that they are not bound by their representation and demand that settlement be made by the carriers on a higher valuation. It seems to us that common honesty and plain, fair dealing should discountenance this practice, and we do not believe that when this court comes to appreciate fully the situation it will lend its approval [fol. 79] to a further continuance thereof.

In conclusion, appellants represent that Messrs. Patterson & Sherry, who reside at Cisco, Eastland County, Texas, are attorneys of record for appellees, and that a copy of this motion may be served upon them.

Respectfully submitted, (Signed) Conner & McRae, Robert Thompson, Attorneys for Petitioners. R. S. Shapard, Of Counsel.

[File endorsement omitted.]

SUPREME COURT OF THE STATE OF TEXAS

Mo. No. 5867

J. L. LANCASTER et al., Receivers,

vs.

B. W. McCARTY et al.

(From Eastland County, Second District)

ORDER OF SUPREME COURT OF TEXAS OVERRULING MOTION FOR REHEARING

April 25th, 1923.

For reahearing of Application No. 12,941. Overruled.

[fol. 80] CLERK'S CERTIFICATE

I, F. T. Connerly, Clerk of the Supreme Court of Texas, hereby certify that the foregoing eighteen pages contain a true and correct copy of the application for writ of error, eogther with the endorsements thereon, order of the Supreme Court of Texas dismissing application for writ of error for want of jurisdiction, motion for rehearing of application for writ of error, together with the endorsements thereon, and order overruling motion for rehearing of application in the case of App. No. 12941, Lancaster & Wallace, Receivers, vs. B. W. McCarty, et al., from Eastland County, Second District, all of which appears of record in this office.

Witness my hand and the seal of the Supreme Court of Texas, at Austin, this the 9th day of July, A. D. 1923.

F. T. Connerly, Clerk, By Carl B. Lyda, Deputy. (Seal of Supreme Court of the State of Texas.)

[fol. 81] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

STIPULATION AS TO PRINTING RECORD—Filed Sept. 11 1923

It is hereby stipulated and agreed by and between George Thompson, Counsel for Plaintiffs in Error, and B. W. Patterson and Dean Sherry, Counsel for Defendants in Error, that in order to reduce the expense of printing the record herein, the caption and other formal parts of the various documents of which the record is composed, may be omitted from the printed record.

Dated this 29th day of August A. D. 1923.

F. H. Prendergast, George Thompson, Counsel for Plaintiffs in Error. B. W. Patterson, Dean Sherry, Counsel for Defendants in Error.

[fol. 82] [File endorsement omitted.]

Endorsed on cover: File No. 29,807. Texas Court of Civil Appeals, Second Supreme Judicial District Term No. 497. J. L. Lancaster and Charles L. Wallace, receivers of the Texas & Pacific Railway, plaintiffs in error, vs. B. W. McCarty, J. T. McCarty, Guy McCarty, et al., &c. Filed August 11th, 1923. File No. 29,807.

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WM. R. STANSBU
CLERK

IN THE

Supreme Court of the United States

No. 148

OCTOBER TERM, 1924

J. L. LANCASTER AND CHARLES L. WALLACE,
Receivers of the Texas & Pacific Railway,
Plaintiffs in Error,

vs.

B. W. McCARTY, J. T. McCARTY, GUY McCARTY, et al.,
Defendants in Error.

In Error to the Court of Civil Appeals for the Second Supreme Judicial District of Texas

BRIEF AND ARGUMENT FOR PLAINTIFFS IN ERROR

T. D. CRESHAM,
F. H. PRENDERGAST,
ROBERT L. W. THOMPSON,
Attorneys for Plaintiffs in Error.

E. DUNCAN & CO., DALLAS

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IN THE

Supreme Court of the United States

No. 148

OCTOBER TERM, 1924

J. L. LANCASTER AND CHARLES L. WALLACE,
Receivers of the Texas & Pacific Railway,
Plaintiffs in Error,

vs.

B. W. McCARTY, J. T. McCARTY, GUY McCARTY, et al.,
Defendants in Error.

In Error to the Court of Civil Appeals for the Second Supreme Judicial District of Texas

---

BRIEF AND ARGUMENT FOR PLAINTIFFS IN ERROR

STATEMENT OF THE CASE

This action was instituted in the County Court at Law of Eastland County, Texas, by B. W. McCarty, J. T. McCarty, Guy McCarty, Lloyd McCarty and George Harris, as partners doing business under the style and firm name of Cisco Furniture Company, to recover of J. L. Lancaster and Charles L.

Wallace, Receivers of the Texas & Pacific Railway, damages laid in the sum of $198.00 for an alleged damage to two rugs valued at $95.00 each and to three chairs alleged to have been shipped for account of defendants in error from Fort Worth, Texas, on or about March 13, 1920, over line of railway of plaintiffs in error to Cisco, Texas, it being alleged that the damage to the rugs rendered same wholly worthless. It was further alleged that more than thirty days prior to the institution of this suit defendants in error presented their claim in writing to plaintiffs in error, who failed, refused and neglected to pay same, in consequence of which it became necessary for defendants in error to employ attorneys to bring this suit for them, and they therefore sought an additional recovery of $20.00 for attorney's fees (*Tr. pp.* 1-2).

In the original answer filed by them, in addition to their general demurrer and general denial, plaintiffs in error specially pleaded that by the terms of the contract under which they undertook to transport the aforesaid shipment from Fort Worth to Cisco they were obliged to exercise only ordinary care in the safe transportation and delivery thereof to defendants in error, and that they did use and exercise such due and ordinary care in doing so, besides which the answer of plaintiffs in error contained the following specific averments (*Tr. pp.* 3-4).

> "That said shipment was received and transported, subject to the regulations and rules of the Railroad Commission of Texas and of the Interstate Commerce Commission and the classification of freight rates

as described and fixed by the Western Classification of such freight rates as adopted, duly posted and filed with the Interstate Commerce Commission and in force at the time of the transportation of said goods, wares and merchandise, and in this connection defendants represent and show to the court that at the time of the making of said contract of shipment the shipper of such goods, wares and merchandise fixed and placed a valuation on the rugs included in such shipment of less than $75.00 per 100 pounds and that under the law and under the tariff rates as fixed and adopted by the Interstate Commerce Commission the plaintiffs herein received the benefit of a less freight rate than they would have rereceived had a greater valuation been placed thereon and derived the benefits of a less freight rate charge and therefore under the terms and conditions and provisions of said contract of shipment and under the law they were limited to their right of recovery herein insofar as any right to recover damages is concerned to such damage only as they may have sustained, based upon such valuation.

"That the terms and provisions of said contract of shipment and the classification of freight and said freight rates as aforesaid were binding upon all parties hereto and the defendants herein plead, each and all, the terms, provisions and stipulations as in said contract of shipment contained, the same and to that extent as if specially set out herein * * *"

Trial was had before the court without the intervention of a jury upon an agreed statement of facts on June 20, 1921, resulting in a judgment on the same date in favor of defendants in error and against plaintiffs in error for the sum of $198.00 damages and $20.00 attorney's fees, less a credit of $10.00, together with legal interest thereon from the date of judgment, from which judgment and decree plaintiffs in error in due course sued out a writ of error in the Court of Civil Appeals for the Second Supreme Judicial District of Texas, at Fort Worth (*Tr. pp.* 5-7). Said cause thereafter coming on for hearing on the transcript of the record, said Court of Civil Appeals on January 13, 1923 (248 S. W. 816), entered its opinion and judgment reforming the aforesaid judgment of the trial court by deducting therefrom the $20.00 allowed as attorney's fees, but in all other respects affirming said judgment (*Tr. pp.* 14-19), whereupon plaintiffs in error duly filed their motion for rehearing (*Tr. pp.* 20-25), which was by said court overruled under date of February 17, 1923 (*Tr. p.* 25).

Within the time allowed by law, plaintiffs in error filed in the Supreme Court of Texas their application for writ of error to said Court of Civil Appeals (*Tr. pp.* 33-38), but under date of April 4, 1923, such application was by said Supreme Court dismissed for want of jurisdiction (*Tr. p.* 39), and their motion for rehearing on said application for writ of error was overruled on April 25, 1923 (*Tr. pp.* 39-45). Within three months after the latter date plaintiffs in error duly filed in the aforesaid Court of Civil Appeals (see Ameri-

can Railway Express Co. vs. Levee, 263 U. S. 19) their assignments of error, and likewise presented to the Chief Justice of that court, Hon. T. H. Conner, their petition for a writ of error from this Honorable Court to said Court of Civil Appeals, which writ was by him allowed on July 23, 1923, and a supersedeas bond approved (under U. S. R. S., Art. 1000—see Doyle vs. Wisconsin, 94 U. S. 50, 24 L. ed. 64) and citation in error duly signed, with acceptance of service by counsel for defendants in error under date of July 28, 1923 (*Tr. pp.* 26-32).

As noted above, this case was tried upon an agreed statement of facts, and hence there is no controversy as to any issue of fact involved, the sole question left to be determined being whether or not articles 707 and 708 of the Texas Revised Statutes (1911) operate as a constitutional limitation upon the effectiveness of a lawful order entered by the Interstate Commerce Commission directing plaintiffs in error herein, as well as other common carriers by railroad in Texas, to observe with respect to intrastate shipments of freight in that state the provisions embodied in the freight classification applicable generally throughout the territory west of the Mississippi River with respect to intrastate shipments. So far as material in this connection, the facts are as follows (*Tr. pp.* 8-12):

At the time the shipment made for account of defendants in error was received for transportation by plaintiffs in error there was in force and effect in Texas, both as to interstate and intrastate movements of freight, pursuant to an order of

the Interstate Commerce Commission in the so-called Shreveport Rate Case, Western Classification No. 56, including items 1, 2 and 3 thereof, same having been duly adopted and filed with the Interstate Commerce Commission. Under said items 1, 2 and 3 of the aforesaid classification a rate of 70 cents per 100 lbs. on rugs not exceding in value $75.00 per 100 lbs. was applicable on the movement in question from Fort Worth to Cisco, and where the value exceeded $75.00 but did not exceed $125.00 per 100 lbs. the rate was $1.05 per 100 lbs. on such movement, approval of which was given in Released Rates Order No. 85, issued by the Interstate Commerce Commission on February 13, 1919, and the rugs for damage to which this suit was brought came within such classification. On the face of the bill of lading issued to the shipper of such rugs there was endorsed the following notation: "Valuation on rugs less than $75.00 per 100 pounds." It was agreed that the shipment was in good order when delivered to plaintiffs in error for transportation, but upon arrival of the goods at destination two of the rugs, weighing 80 pounds, were practically ruined with acid and were of the reasonable market value of $5.00 each, but had they reached Cisco in an undamaged condition their value would have been $95.00 each. Three chairs in the shipment were also damaged to the extent of 8.00, but no controversy exists as to that item of damage.

It accordingly follows, that under the tariff and classification items in accordance with which such shipment was made, the liability of plaintiffs in error for the damage to the rugs

would have been only $60.00 (80 lbs. on valuation of $75.00 per 100 lbs.), and the entire controversy before the court revolves around the question of whether the liability of plaintiffs in error is restricted to this sum of $60.00, in accordance with the declaration of the shipper that the value of the rugs was less than $75.00 per 100 lbs., whereby the shipment was accorded the benefit of the reduced rate of 70 cents per 100 lbs. made available by such declaration of value, or whether articles 707 and 708 of the Texas Revised Statutes have the effect of nullifying and emasculating the order of the Interstate Commerce Commission directing that the provisions of the current Western Classification be made effective as to intrastate shipments in Texas, as well as to interstate shipments of freight throughout the West generally, as was held by the Court of Civil Appeals herein, in consequence of which plaintiffs in error were adjudged to be liable for the actual value of the damaged rugs, $190.00, less the $10.00 salvage value thereof, or $180.00, together with an additional $8.00 for the damage done the chairs. The amount in controversy is quite small, it is true, but when it is recalled that shipments of this character are constantly being made in Texas it will be recognized that the issues are of considerable significance.

The Federal Question Under Review

The federal question presented herein partakes of a two-fold aspect, namely: (1) The denial by a state court of an authority exercised by the Interstate Commerce Commission

under sections 2 and 3 of the Interstate Commerce Act in ordering, upon a finding of the existence of undue prejudice to and unjust discrimination against interstate commerce, that the carriers serving both Shreveport, La., and competitive points in Texas shall publish and observe the Western Classification as to intrastate shipments in that state, and (2) the affirmation by a state court, following the aforesaid finding and order of the Interstate Commerce Commission, of the validity of a state statute which works a discrimination against interstate commerce in direct conflict with said sections 2 and 3 of the Interstate Commerce Act.

From the foregoing, then, it will be seen that in consequence of the decision of the Court of Civil Appeals declining to give legal effect to the aforesaid order of the Interstate Commerce Commission, the validity of a statute of the United States or an authority exercised thereunder is drawn in question, and the denial thereof forms the subject of direct inquiry (United States ex rel. Champion Lumber Co. vs. Fisher, 227 U. S. 445, 451), and likewise, by declining to recognize the validity of the aforesaid agreement as to value between the carriers and defendant in error, perforce of the inhibitions of articles 707 and 708 of the Revised Statutes of Texas, the judgment of said Court of Civil Appeals was repugnant to and in conflict with the commerce clause of the Constitution of the United States and of laws grounded thereon. Thus, there was presented a federal question involving a direct and irreconcilable conflict between the aforesaid statutes of Texas and an order entered by the Interstate Com-

merce Commission in performance of the constitutional authority conferred upon it by the Congress in the Interstate Commerce Act, and an adjudication of such federal question was necessary to the judgment rendered (Cissna vs. Tennessee, 246 U. S. 289, 62 L. ed. 720); indeed, although recognizing the power of the Interstate Commerce Commission with respect to interstate and intrastate rates when found to be in conflict, the court specifically denied the authority of the Interstate Commerce Commission to enter an order not in harmony with said statutes of Texas, which, for the convenience of the Court are set out in full below, to wit:

> Art. 707. Common Law Shall Govern, Except, etc.—The duties and liabilities of carriers in this state shall be the same as are prescribed by the common law, and the remedies against them shall be the same, except where otherwise provided by this title.
>
> Art. 708. Carriers Can Not Limit Their Responsibility.—Railroad companies and other common carriers of goods, wares and merchandise, for hire, within this state, on land or in boats or vessels on the water entirely within the body of this state, shall not limit or restrict their liability as it exists at common law, by any general or special notice, or by inserting exceptions in the bill of lading or memorandum given upon the receipt of the goods for transportation, or in any other manner whatever, and no special agreement made in contravention of the foregoing provisions of this article shall be valid.

From the aforementioned adverse judgment of the Court of Civil Appeals plaintiffs in error have brought the case here for review and assign (*Tr. p.* 30) the following:

SPECIFICATIONS OF ERROR

First

The Court of Civil Appeals erred in holding that under the provisions of Articles 707 and 708 of the Revised Statutes of Texas the shipper's declaration or agreement as to the value of the rugs shipped to or for account of defendants in error, as endorsed on the face of the shipping contract executed by the shipper and plaintiffs in error, was invalid and unenforceable, and that plaintiffs in error are liable to defendants in error for the full value of the damaged rugs at the time of shipment, less salvage thereon.

Second

The Court of Civil Appeals erred in affirming the validity, as applied to the facts of this case, of Article 708, Revised Statutes of Texas, which declares that no agreement between a shipper and a carrier as to the value of a shipment of goods made in consideration of a reduced transportation charge shall be valid and enforceable, because the enforcement of such statute imposes an improper and undue burden on interstate commerce.

Third

The Court of Civil Appeals erred in holding that the agreement between the shipper and the carrier fixing the value of

the goods shipped in consideration of a reduced rate was void because contrary to Article 708, Revised Statutes of Texas.

BRIEF OF ARGUMENT

I.

The Interstate Commerce Commission having found undue prejudice to exist in a given locality with respect to interstate rates and classification regulations so as to create unjust discrimination against interstate commerce, and thereupon directed the carriers at interest to publish and observe with respect to intrastate traffic the current interstate classification regulations and practices, and otherwise to remove such unjust discrimination, all rules and regulations embodied in tariffs and classifications filed and put into effect to correct such undue prejudice are binding alike on the public and the carriers affected thereby, and will be enforced and given full effect and recognition by the courts so long as such administrative order continues in force and effect.

The sole issues for the determination of the court in this case are whether the order of the Interstate Commerce Commission in the now famous Shreveport Rate Case, directing and requiring the carriers defendant therein to publish and observe as to intrastate shipments of freight in Texas the provisions of the current Western Classification applicable

generally as to interstate commerce, constituted a valid exercise of the powers of that body, and if so, the effect and bearing upon the inhibitions of articles 707 and 708 of the Revised Statutes of Texas (1911), of the provisions in said classification authorizing shippers and carriers, in consideration of a reduced rate, to agree upon a fixed valuation of intrastate freight shipments. Those are the precise questions directly met and on which the Court of Civil Appeals rested its decision, as is evident from the following passages taken from the opinion of that court (*Tr. pp.* 16-19):

> "Appellants' contention is that the rates established by the Interstate Commerce Commission are applicable in this case, although it was an intrastate shipment, and that the merits of the case must be decided by the decisions of the Supreme Court of the United States and other federal courts, and not by the laws of Texas, shown in the statutes and in the decisions of the Supreme Court and the Courts of Civil Appeals of Texas. Their contention is that in the Shreveport Rate Case, H. E. & W. T. Ry. Co. vs. United States, 234 U. S. 342, 58 Law ed. 1341, and in the Minnesota Rate Case, Simpson vs. Shepard, 57 Law ed. 1511, and in other decisions, the Supreme Court of the United States has decided that Congress has the right to regulate intrastate commerce on interstate lines, such as the Texas & Pacific Railway Company, and that the rates and rules established by the Interstate Commerce Commission are binding on the parties to this contract, without reference to any statute

of the state or any holding of the state courts. We understand that the holding of the Supreme Court in the first cited case is that Congress, in the exercise of its paramount power, may prevent the common instrumentalities of interstate and intrastate commercial intercourse from being used in their intrastate operations to the injury of interstate commerce; and that Congress has the right to control intrastate rates maintained by an interstate carrier, under other authority, to the extent necessary to remove any unjust discrimination against interstate commerce arising out of the relation between such intrastate rates and interstate rates which are reasonable within themselves; and that the Interstate Commerce Commission has authority to control the intrastate rates maintained by the carrier under other authority to the extent necessary to remove such discrimination. There is no contention, and certainly no proof, to sustain such a contention in this case, that the rates charged by state authority upon the shipment in question were unreasonable or discriminatory, or interfered with or affected interstate commerce in any way. * * *

"But we do not see that the Interstate Commerce Commission would be authorized, under the state of facts here shown, to establish rates governing shipment in the instant case, but think that such shipment would be governed by the laws of this state and the rules and regulations issued by the State Railroad Commission and the rates established by it. There is no evidence of any dis-

crimination against interstate commerce by reason of rates sought to be established by the state authorities. * * *

"In the absence of proof to the contrary, it will be presumed that the loss of and injury to intrastate shipments was caused by the negligence of the carrier, so that the limitation of liability in the contract is not valid under article 708. * * * Therefore, the main contention of appellants must be overruled."

The court also cites the case of Chicago, M. & St. P. Ry. Co. vs. McCaull-Dinsmore Co., 253 U. S. 97, 64 L. ed. 801, as authority for the proposition that under the so-called First Cummins' Amendment of the Interstate Commerce Act carriers were made liable for the full actual loss, damage or injury, notwithstanding any limitation of liability or limitation of the amount of recovery, or any representation or agreement as to value, and thereupon added that it did not appear to the court that the changes wrought therein by the Act of August 9, 1916, "so changed the law as to make the decision of the Supreme Court in the decided case inapplicable." But this comment entirely overlooks the fact, as stipulated in the agreed statement of facts, that the classification items providing for a reduced rate where the value of the rugs was declared or agreed to be $75.00 per 100 lbs. were published under authority of the Interstate Commerce Commission's Released Rates Order No. 85, of November 13, 1919 (*Tr. pp.* 12-13), although so noted in the court's opinion (*Tr. p.* 16), and hence were in strict compliance with the requirements of the

Second Cummins' Amendment of 1916. Apparently the court failed to grasp the significance of the modifications made by the latter in the former amendment whereby, except as to "ordinary livestock," the carriers were permitted to publish rates dependent upon the declared or agreed value of property when "authorized or required by order of the Interstate Commerce Commission" so to do. Such consent having been given by the Commission in its Released Rates Order No. 85, of November 13, 1919, with respect to the rates on the shipment of rugs involved herein, so much of the reasoning of the court is of no consequence and may be disregarded.

However, the sanction by the Commission of the reduced rates is a feature with which we are only indirectly concerned in the review of this case. We are not here concerned with an enquiry into the application as to interstate commerce of the rates and regulations in question, since it is expressly agreed (*Tr. p.* 13) that the Western Classification and applicable tariff "were put into effect in pursuance of an order of Interstate Commerce Commission entered in what is known as the Shreveport Rate Case, and were made by such order applicable to the intrastate as well as interstate shipments," and hence there exists no issue on that point. So it may be assumed for the purposes of this case, especially in view of the aforesaid showing that the Interstate Commerce Commission has authorized the application of the reduced rates on shipments of rugs based upon the declared or agreed valuation, that the rates and regulations in review herein were lawfully applicable so far as interstate commerce is concerned, which

leaves us to a consideration of the following question: To what extent was it competent for the Interstate Commerce Commission to impose such rates and regulations upon intrastate traffic in Texas under its finding that the prejudicial rates and practices relating to interstate traffic operated as a discrimination against interstate commerce?

A perusal of the foregoing excerpts from the opinion of the Court of Civil Appeals will readily disclose that that Court wholly misconceives the real issues of the case. The court states, for instance, that "There is no contention, and certainly no proof to sustain such a contention in this case, that the rates charged by state authority upon the shipment in question were unreasonable or discriminatory, or interfered with or affected interstate commerce in any way." Inasmuch as no contention is or has been made, however, that any rate charged by state authority is unreasonable or discriminatory, these remarks by the court are wholly beside the point. The true situation, so far as the *rates* are concerned, is that the former rates of the Railroad Commission of Texas had been found in the Shreveport Case unduly prejudicial of and unjustly discriminatory against interstate commerce, and had been corrected by the carriers to conform to the Commission's order in that case, so that the *rates* themselves were not fixed "by state authority."

But, a fact that the Court of Civil Appeals entirely failed to grasp, there is in reality no issue whatsoever as to the *rates* before the court for determination, the controversy herein having to do solely with the regulations embodied in the Western

Classification, which the Interstate Commerce Commission had ordered the carriers to observe in Texas indifferently as between intrastate and interstate commerce. The rate charged on such shipment of rugs would have been identically the same had the movement been interstate in character as that which was actually assessed on said movement from Fort Worth to Cisco, Texas, but under the classification items set out in the corrected statement of facts, had the shipment been of an interstate nature, there can be no doubt but that defendants in error would have been limited to a recovery for the damage to the rugs to the value represented by the shipper and endorsed on the face of the bill of lading, since it has been held by this court as far back as its decision in the case of Hart vs. Pennsylvania R. R. Co., 112 U. S. 331, that the making of a lower transportation charge for the interstate transportation of freight where the shipper agrees that the carrier's liability shall not exceed a stipulated amount in the event of loss or damage thereto than would otherwise be charged constitutes a sufficient consideration to support such agreement and is valid and binding upon the shipper and his privities, yet we are confronted with the decision of the court below that the aforesaid Texas statutes are superior to the authority of the Interstate Commerce Commission to remove such discrimination. *The point of difference is that a classification regulation is involved rather than a rate discrimination, as such.* That the regulatory power of the federal government over intrastate traffic is not restricted to the question of rates is manifest from the following unqualified observations of Mr.

Chief Justice Marshall in the celebrated case of Gibbons vs. Ogden, 9 Wheat 1, 206, 6 L. ed. 23, 72: "Congress may control the state laws, so far as it may be necessary to control them, for the regulation of commerce."

But the Court of Civil Appeals, in overruling the contentions of plaintiffs in error on this point, said that, "In the absence of proof to the contrary, it will be presumed that the loss of or injury to intrastate shipments was caused by the negligence of the carrier, so that the limitation of liability in the contract is not valid under article 708." This holding obviously disregards *in toto* the finding of the Interstate Commerce Commission, as hereinafter more fully discussed, that the Texas Classification formerly in effect was more favorable to the shipper than the Western and that unless the same classification applies to intrastate and interstate shipments unjust discrimination results, as also the Commission's order (based upon such finding) requiring the carriers to observe the provisions of the Western Classification as to shipments between points in Texas as well as to interstate movements.

Manifestly, if a shipper of rugs from Texas to a point in another state is precluded, in case of loss or damage, from effecting a recovery in excess of the agreed or declared value thereof where he received the benefit of a reduced rate, and yet the shipper of a like quantity of rugs between points in Texas under similar circumstances may recover the full amount of his loss, although he too has taken advantage of the saving effected by the reduced rate given in consideration of

the declaration or agreement as to value, to say that no discrimination against the interstate shipper results evidences an utter misconception of the controversy or a total disregard of the facts of record. It was to correct just such abuses as these that the Interstate Commerce Commission directed the carriers to observe the Western Classification as to interstate traffic in Texas as well as to interstate shipments.

A still further misconception into which the Court of Civil Appeals fell was in its comment upon the absence in the bill of lading of any reference to rates adopted by the Interstate Commerce Commission (*Tr. p.* 15), and upon the conditions found on the back of the bill of lading with respect to the rates, rules and regulations of the Railroad Commission of Texas. If we are correct in our contention that the rates, regulations, etc., published in compliance with the order of the Interstate Commerce Commission in the Shreveport Case took precedence over the rates, regulations, etc., found by the Commission to be unduly prejudicial to interstate commerce, then any conflicting rates or regulations of the Railroad Comission of Texas were nugatory, and that the public is charged with the legal notice of all interstate rates, rules and regulations duly published in accordance with the requirements of the Interstate Commerce Act, is too well settled to require the citation of authority or to call for argument. But see, nevertheless, Smith vs. Railway Co., 107 N. W. 56; D'Utassy vs. Sou. Pac. Co., 161 N. Y. S. 22; American Sugar Ref. Co. vs. R. R. Co., 207 Fed. 733, 125 C. C. A. 251; Wichita Falls & W. Ry. Co. vs. Asher, 171 S. W. 1114.

This leads us to a

Review of the Shreveport Rate Case

The so-called Shreveport Rate Case originated in a complaint filed with the Interstate Commerce Commission by J. J. Meredith, Shelby Taylor and Henry B. Schreiber, constituting the Railroad Commission of Louisiana, against the St. Louis Southwestern Railway Company and other lines of railroad operating in the State of Texas. The first report and order entered by the Commission in that proceeding were made on March 11, 1912, being reported in 23 I. C. C. 31. A petition was thereupon filed with the then-existing Commerce Court to have said order set aside, by which court the petition on final hearing was dismissed in a decree entered on April 25, 1913 (205 Fed. 380), which latter decision was affirmed by this court on June 8, 1914, in Houston, East & West Texas Ry Co. et al. vs. United States, 234 U. S. 342, 58 L. ed. 1341. During the pendency of this litigation the so-called Minnesota Rate Case (Simpson vs. Shepard, 230 U. S. 352, 57 L. ed. 1511, 48 L. R. A. [n. s.] 1151) was argued before and decided by the Supreme Court, in which the way was paved for the subsequent opinion and decision of that Court in the Shreveport Case in the following paragraph (pages 432-33) where, after reviewing and discussing a number of decisions bearing upon the power of the federal government to govern and regulate the movement of commerce wholly within a given state, the court said:

"But these considerations are for the practical judg-

ment of Congress in determining the extent of the regulation necessary under existing conditions of transportation to conserve and promote the interest of interstate commerce. If the situation has become such, by reason of the interblending of the interstate and intrastate operations of interstate carriers, that adequate regulation of their interstate rates cannot be maintained without imposing requirements with respect to their intrastate rates which substantially affect the former, it is for Congress to determine, within the limits of its constitutional authority over interstate commerce and its instruments, the measure of the regulation it should supply. It is the function of this court to interpret and apply the law already enacted, but not, under the guise of construction, to provide a more comprehensive scheme of regulation than Congress has decided upon. Nor, in the absence of federal action, may we deny effect to the laws of the state enacted within the field which it is entitled to occupy until its authority is limited through the exertion by Congress of its paramount constitutional power."

Accordingly, when the Shreveport Case itself came before this Court for consideration in 1914 a predicate had been laid for the following clear-cut holding of the Court in that case (234 U. S. 353-355):

"This principle is applicable here. We find no reason to doubt that Congress is entitled to keep the high-

ways of interstate communication open to interstate traffic upon fair and equal terms. That an unjust discrimination in the rates of a common carrier, by which one person or locality is unduly favored as against another under substantially similar conditions of traffic, constitutes an evil, is undeniable; and where this evil consists in the action of an interstate carrier in unreasonably discriminating against interstate traffic over its line, the authority of Congress to prevent it is equally clear. It is immaterial, so far as the protecting power of Congress is concerned, that the discrimination arises from intrastate rates as compared with interstate rates. The use of the instrument of interstate commerce in a discriminatory manner so as to inflict injury upon that commerce, or some part thereof, furnishes abundant ground for federal intervention. Nor can the attempted exercise of state authority alter the matter, where Congress has acted, for a state may not authorize the carrier to do that which Congress is entitled to forbid and has forbidden.

"It is to be noted—as the government has well said in its argument in support of the Commission's order—that the power to deal with the relation between the two kinds of rates, as a relation, lies exclusively with Congress. It is manifest that the state cannot fix the relation of the carrier's interstate and intrastate charges without directly interfering with the former, unless it

simply follows the standard set by federal authority. * * *

"It is also clear that, in removing the injurious discriminations against interstate traffic arising from the relation of intrastate to interstate rates, Congress is not bound to reduce the latter below what it may deem to be a proper standard, fair to the carrier and to the public. Otherwise, it could prevent the injury to interstate commerce only by the sacrifice of its judgment as to interstate rates. Congress is entitled to maintain its own standard as to these rates, and to forbid any discriminatory action by interstate carriers which will obstruct the freedom of movement of interstate traffic over their lines in accordance with the terms it establishes."

As applied generally to the purpose of the Interstate Commerce Act, the following quotation is taken from the Supreme Court's decision in New York Railroad Co. vs. Interstate Commerce Commission, 200 U. S. 361, 391:

"It cannot be challenged that the great purpose of the act to regulate commerce, whilst seeking to prevent unjust and unreasonable rates, was to secure equality of rates as to all, and to destroy favoritism, these last being accomplished by requiring the publication of tariffs, and by prohibiting secret departures from such tariffs, and forbidding rebates, preferences and all other forms of undue discrimination. To this extent and for

these purposes the statute was remedial and is, therefore, entitled to receive that interpretation which reasonably accomplishes the great public purpose which it was enacted to subserve."

The Findings of the Interstate Commerce Commission Regarding Classification Discrimination Against Interstate Commerce.

Following the Supreme Court's decision in the Shreveport Case, the Interstate Commerce Commission gave further consideration to the alleged discrimination against interstate commerce growing out of the Shreveport situation upon another petition filed by the proper authorities of the State of Louisiana praying for supplemental findings enlarging the scope of its order on this subject, and following a hearing handed down its conclusions, which will be found reported in 34 I. C. C. 472 *et seq.* In connection with other relief sought on this occasion, it was contended that the defendant carriers should apply the rules and regulations of the Western Classification on all shipments from or to points on their lines in Texas or should apply the Texas Classification on all shipments between Shreveport and points on their lines in Texas. With respect to this the Commission made the following finding in its decision rendered therein on June 17, 1915 (pp. 478-79):

"Shipments from Shreveport to Texas destinations are subject to the Western Classification. Shipments from Texas cities to the same Texas destination are subject to the Texas Classification. The petitioners contend that *an equalization of the class rates per se will not remove existing unjust discrimination on class-rate traffic*, because the Texas Classification is more 'liberal to the shipper' than is the Western Classification, and *they ask that interstate shipments from Shreveport and eastern Texas intrastate shipments be made subject to one and the same classification.*

"The evidence on behalf of both petitioners and carriers bears out the contention that the Texas Classification is, on many articles, more liberal to the shipper than is the Western. Generally speaking, *the minimum carload weights provided in the Texas Classification are lower than in the Western*, the usual or standard being in the former 24,000 pounds as against 36,000 pounds in the latter.

"Unquestionably the situation between Shreveport and its Texas competitors is such that *unless the same classification applies unjust discrimination results.* The Western Classification governs interstate transportation in the territory surrounding Shreveport, including transportation between Texas points and points in other states. In large part it has received the endorsement of

this Commission. *Western Classification Case*, 25 I. C. C. 442. *Considering the finding already made that transportation conditions for the competitive hauls here involved are substantially similar, justice demands that the same classifications shall apply to all, and consequently that the Western Classification shall govern on traffic via the lines of these defendants from points in eastern Texas toward Shreveport. The order herein will so provide.*" (Italics ours.)

In another complaint, entitled Railroad Commission of Louisiana vs. Aransas Harbor Terminal Railway Co. et al., 41 I. C. C. 83, the Commission gave further consideration to the classification issue, it being contended (pp. 106-107) that in many respects the Texas Classification afforded shippers thereunder the benefit of lower class ratings than were allowed shippers subject to the Western Classification and that the former otherwise favored and was much more liberal in its privileges to shipments wholly within the State of Texas than were accorded to interstate traffic of the same character, with respect to which the Commission held as follows (p. 123):

"*It has been conclusively shown, and we therefore find, that the present difference in classifications has been, now is, and for the future would be unduly prejudicial to Shreveport. We are therefore constrained to find that for the future defendants must establish and apply to the transportation of property between points in*

Texas the provisions of the Western Classification in effect at the time such transportation takes place." (Italics ours.)

Upon rehearing (48 I. C. C. 312), the Commission gave further and more detailed consideration to this phase of the complaint (pp. 336-40), and to meet certain specific objections raised made certain modifications in its original order, none of which, however, had any bearing on the provisions in the Western Classification authorizing the transportation of various articles under a lower class rating where a limited value is declared or agreed upon at the time of shipment than would otherwise be applicable, and in general made the following finding on the classification issue under date of January 22, 1918 (p. 346):

> "We are of the opinion and find that the transportation of property between Shreveport and Texas points should be governed by the provisions of the current Western Classification in effect at the time such traffic moves, *with such exceptions* as are then applied on interstate traffic between points in the State of Texas and points in the contiguous states north and east thereof *as stated in Southwestern Lines Classification exceptions and rules-circular.*" (Italics ours.)

And reading on, under the sub-caption of "Readjustments Incident to Change of Classification" (p. 349):

> "There are many items in defendants tariffs framed to cover the movement of various articles upon which

rating have been increased by the change from the Texas to the Western Classification. In many such cases the carriers have published rates for application between Shreveport and Texas points, and locally in Texas, which are materially lower than the maximum rates thus permitted by our order. These articles include furniture, vinegar, sewer pipe, cement plaster, box and crate material, and many other commodities. The publication of the ratings and rates by the carriers on these and other items not named herein has done much to bring about a more satisfactory and reasonable system of rates in this territory, and nothing in our report or order should be so construed as to warrant the carriers in changing any of such rates except for the purpose of adaptation to the new and revised class rates hereinbefore prescribed."

One cannot read the foregoing expressions without being convinced that it was the obvious purpose and intent of the Interstate Commerce Commission in the Shreveport Rate Case not only to require that the carriers maintain an equality of rates as to interstate shipments between Shreveport and points in Texas, on the one hand, and as to intrastate shipments within Texas, on the other, but to say, in addition thereto, that no other character of discrimination against interstate commerce should continue to exist, whether by virtue of more favorable minimum carload weights provided in the Texas classification or by other regulations and practices provided

for therein. The language of the Commission is most sweeping—"unless the same classification applies unjust discrimination results." And again, "It has been conclusively shown, and we therefore find, that the present difference in classifications has been, now is, and for the future would be unduly prejudicial to Shreveport." To which the Commission thereupon added: "We are therefore constrained to find that for the future defendants must establish and apply to the transportation of property *between points in Texas* the provisions of the Western Classification in effect at the time such transportation takes place."

It is well settled by numerous decisions of the Supreme Court that rates and regulations lawfully filed by carriers with the Interstate Commerce Commission are valid and binding upon all parties affected thereby unless and until same have been attacked and condemned in a complaint filed with the Interstate Commerce Commission (see Pierce vs. Wells Fargo & Co., 236 U. S. 278), and in view of the order of the Interstate Commerce Commission requiring that the Western Classification be used uniformly in the State of Texas without discrimination between interstate and intrastate traffic, taken in connection with the decision of the Supreme Court in the Shreveport Case, it would seem conclusively to follow that the owner of an intrastate shipment of freight within the State of Texas is as much subject to the limitations and conditions of the Western Classification as would be the owner of an interstate shipment moving thereunder, and hence,

where he has declared the value of such an intrastate shipment not to exceed a stipulated amount in order that he might thereby secure the benefit of a lower rate than he would otherwise have to pay for the transportation of such shipment, he will be limited to a recovery, in the event of the loss of or damage to such shipment, not exceeding proportionately the value so declared or agreed upon.

II.

Since common carriers have a right under the commerce clause of the United States Constitution, as interpreted and given effect by the courts, to enter into an agreement with a shipper of freight, when supported by a reduced rate, that they shall not be liable beyond a stipulated amount in the event of the loss of or damage to such freight, it is unlawful for such carriers to pay more than such stipulated valuation for the loss of or for damage to an intrastate shipment of freight governed by tariffs and classifications duly filed in compliance with a competent order of the Interstate Commerce Commission directing the observance thereof by the carriers with respect to intrastate traffic in order to avoid the unjust discrimination found by such Commission to exist as between such intrastate traffic and interstate commerce, the tariffs and classifications in question providing that a reduced rate shall apply on

such shipment when a lower shipping value thereof is agreed upon or stipulated in the contract of shipment than that for which the carrier would otherwise be liable in the event of loss or damage, regardless of whether such shipment be interstate or intrastate in character.

What has been said under the next preceding proposition is equally applicable here, and hence we will not burden the Court with a repetition of same, contenting ourselves with a mere reference thereto in support of the foregoing proposition.

III.

It appearing that, in pursuance of an opinion and competent order of the Interstate Commerce Commission requiring and directing plaintiffs in error and other common carriers to correct and remove from their rates, classifications, rules and regulations then in effect, certain undue discriminations against and prejudices to interstate commerce found by said Commission illegally to prevail therein, said carriers published in their classification relating to shipments of rugs in less than carload quantities a first class rating applicable to both interstate and intrastate movements where the value of such rugs is agreed or declared in writing not to exceed $75.00 per cwt., and a rating of one and one-half times first class whede the

value exceeds $75.00 and does not exceed $125.00 per cwt., such declaration or agreement of value being valid as to interstate movements, it is under such circumstances legal and binding upon a shipper of rugs in an intrastate movement, notwithstanding a state statute purporting to invalidate such declaration or agreement as to value.

As has been noted previously the Court of Civil Appeals held that, perforce of article 708 of the Revised Statutes of Texas, the aforesaid limitation of liability growing out of the shipper's representation that the value of the rugs was less than $75.00 per 100 lbs., as authorized by the provisions of the Western Classification, is not valid, and thereupon overruled the contentions of the plaintiffs in error to the contrary, this regardless of the order of the Interstate Commerce Commission directing that the provisions of the Western Classification be observed indifferently as to both intrastate and interstate traffic in Texas, and of the benefit flowing to defendtnts in error of a reduced rate based upon the aforesaid representation as to the value of the rugs, as endorsed on the shipping contract. This holding is strictly in accordance with a long line of decisions of the Texas courts which originated long prior to the issuance of the aforesaid order of the Interstate Commerce Commission in the Shreveport Rate Case. Thus, in Railway Co. vs. Harris, 67 Tex. 169-73, decided in 1886, it was said with respect to certain special contracts alleged in the answer of the defendant car-

rier to have been executed in consideration of the transportation having been at a reduced price that:

"The appellee filed demurrers to so much of the answer as set up the special contracts, and these demurrers were sustained.

"It is claimed that this was error. * * *

"* * * The common carrier can not, by contract, relieve itself from liability for an injury resulting from the negligence of itself or servants, though the negligence be of a less degree than was intended by the term used.

"* * * Conceeding, then, for the purpose of this case, *that the statutes of this state forbidding any limitation of the liability of a common carrier by contract are to have effect only as to such carriage as does not go beyond the limits of this state,* the question arises whether the contract relied on in this case is reasonable in its character.

"* * * The sufficiency of the answer must be determined by the case made by the petition, and that it might be a good answer to some case is not sufficient; the answer must present a defense to the case made by the petition. * * *

"It may well be doubted if such a contract as is relied on in this case ought ever to be sustained. * * * We are of the opinion that there was no error in sustaining the demurrers to the answer setting up the defenses we have noticed." (Italics ours.)

Irrespective of the correctness of these decisions prior to 1915, however, the finding of the Interstate Commerce Commission in that year of the existence in the classification regulations in effect intrastate in Texas of undue prejudice to and of unjust discrimination against interstate commerce, coupled with its order requiring the observance by the carriers of the provisions of the current Western Classification as to intrastate shipments in Texas, cast a vastly different complexion upon the entire fabric of railroad rates, regulations and practices in that state. While it is true that this Court takes the view that it will accept as controlling the decision of the state court regarding the proper construction of a state statute, it will nevertheless exercise its own judgment when called upon to determine whether such statute, as so construed and applied, is repugnant to the restrictions of the federal Constitution. Among the more recent cases in which this view is adhered to are the following: Crew Levick Co. vs. Pennsylvania, 245 U. S. 292, 294, 62 L. ed. 295, 298, and cases therein cited; Corn Products Refining Co. vs. Eddy, 249 U. S. 427, 432, 63 L. ed. 689, 693; Ward & Gow vs. Krinsky, 259 U. S. 503, 66 L. ed. 1033.

Section 2 and subdivision (1) of section 3 of the Interstate Commerce Act, as amended, read as follows, to wit:

> Section 2. That if any common carrier subject to the provisions of this Act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons

a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property * * * subject to the provisions of this Act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation * * * of a like kind of traffic * * * under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

Section 3. (1) That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Now, we have previously commented at length upon the findings of the Interstate Commerce Commission of undue prejudice and unjust discrimination against interstate commerce and in favor of intrastate traffic in Texas and that "transportation conditions for the competitive hauls" involved are "substantially similar," but with respect to the latter

point attention is directed to the following further quotation from the Commission's opinion in Railroad Commission vs. Railway Co., 41 I. C. C. 83, 119, where it was said that: "The uncontradicted evidence is that no transportation conditions exist which justify rates between Shreveport and points in Texas higher than those contemporaneously applied for like distances within Texas."

Accordingly, it will be seen that, should plaintiffs in error, in compliance with the dictates of articles 707 and 708 of the Revised Statutes of Texas, pay the actual value of a shipment of rugs between points in Texas where the shipper has enjoyed the benefit of a reduced rate, as provided in the Western Classification, in consideration of his representation that same did not exceed a fixed value, when a loss or damage occurs, and yet decline under like circumstances to settle with shippers of rugs in interstate commerce on losses sustained thereon, as they would be obligated to do under the same classification and tariffs that govern intrastate movements in Texas under the aforesaid order of the Intrastate Commerce Commission, otherwise than on basis of the declared or agreed value, a direct violation of sections 2 and 3 of the Interstate Commerce Act would result; or expressed in other words, a settlement made in compliance with the state statute, as interpreted by the courts of Texas, would offend the federal statutes, whereas a settlement which would work no unjust discrimination against interstate commerce would do direct violence to the laws of Texas. Hence, it necessarily follows that this Court

has jurisdiction to determine for itself the validity of the state laws in so far as they conflict with the commerce clause of the Constitution of the United States and the laws of the Congress enacted in pursuance thereof.

IV.

Where a conflict arises between a clause in the Constitution of the United States, as interpreted and given application by the courts, or laws of the Congress which derive their sanction therefrom, and the statutes or laws enacted by the legislature of a state, the former is superior and will override and control the latter to the extent that such conflict may exist.

The observations found under the preceding specifications fully cover the above and there being no occasion for so doing, will not be rehearsed hereunder.

The case is respectfully submitted on the record and plaintiffs in error pray that the judgment of the Court of Civil Appeals for the Eighth Supreme Judicial District of Texas be reversed.

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Attorneys for Plaintiffs in Error.

shipped intrastate between two points in Texas subject to tariff and classification adopted by the carrier pursuant to an order of the Commission requiring the carrier to remove discrimination against interstate commerce resulting from lower intrastate rates. *Shreveport Case*, 234 U. S. 342. P. 430.

248 S. W. 816, reversed.

ERROR to a judgment of the Court of Civil Appeals of Texas sustaining a recovery from the receivers of the Railway for damages to goods shipped.

Mr. T. D. Gresham and *Mr. F. H. Prendergast* for plaintiffs in error, submitted.

No brief filed for the defendants in error.

MR. CHIEF JUSTICE TAFT delivered the opinion of the Court.

This was a suit for damages in the County Court of Eastland County, Texas, by the defendants in error, partners as the Cisco Furniture Company, to recover from the plaintiffs in error, the Receivers of the Texas & Pacific Railway, $198 for injury to two rugs and to three chairs shipped by the Furniture Company from Fort Worth, Texas, over the Railway to Cisco, Texas, and $20 for attorney's fees exacted by a state statute for the delay of the Railway in allowing and paying the claim. The real issue here is whether the amount of the damages for the admitted injury should be measured by the statutory law of Texas or by the regulations of the Interstate Commerce Commission with respect to the classification of traffic and fixing of rates, as directed by it in accordance with the decree by the Commerce Court of the United States, affirmed by this Court in *Houston & Texas Railway Co.* v. *United States*, 234 U. S. 342, known as the *Shreveport Case*. The damage to the chairs is not involved. The question arises only as to the two rugs. The transporta-

tion began at Fort Worth, Texas, and ended at Cisco, Texas. It was carried on under a bill of lading according to the forms of the Interstate Commerce Commission, which provided that the rates should be 70 cents per 100 pounds on rugs classified as not exceeding in value $75. The bill of lading was stamped with the following notation: "Valuation on rugs less than $75 per 100 pounds." The rugs in the transit were much damaged by acid and were said to be worth but $5 apiece after the damage. The shippers claim that their value when shipped was $95 apiece. Under the valuation noted on the bill of lading, their value could not have exceeded $60 because each rug weighed 40 pounds.

The Texas Court of Civil Appeals, which was the highest court to which the case could be brought (because the Supreme Court of Texas held that it had no jurisdiction), relied upon Article 708 of the Revised Statutes of Texas, which provides that railroad companies within the State shall not limit or restrict their liability, as it existed at common law, by any general or special notice, or by inserting exceptions in the bill of lading, or by memorandum given upon the receipt of the goods for transportation, or in any other manner, and that any such special agreement shall be invalid. These rugs were shipped March 13, 1920, after the second Cummins Amendment to the Interstate Commerce Act (August 9, 1916, 39 Stat. 441, c. 301), which permits to carriers a limitation of liability upon property received for transportation concerning which the carrier shall have been authorized by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper, or agreed upon in writing as the release value of the property. In such a case, such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released.

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No brief filed for the defendants in error.

MR. CHIEF JUSTICE TAFT delivered the opinion of the Court.

This was a suit for damages in the County Court of Eastland County, Texas, by the defendants in error, partners as the Cisco Furniture Company, to recover from the plaintiffs in error, the Receivers of the Texas & Pacific Railway, $198 for injury to two rugs and to three chairs shipped by the Furniture Company from Fort Worth, Texas, over the Railway to Cisco, Texas, and $20 for attorney's fees exacted by a state statute for the delay of the Railway in allowing and paying the claim. The real issue here is whether the amount of the damages for the admitted injury should be measured by the statutory law of Texas or by the regulations of the Interstate Commerce Commission with respect to the classification of traffic and fixing of rates, as directed by it in accordance with the decree by the Commerce Court of the United States, affirmed by this Court in *Houston & Texas Railway Co.* v. *United States*, 234 U. S. 342, known as the *Shreveport Case*. The damage to the chairs is not involved. The question arises only as to the two rugs. The transporta-

tion began at Fort Worth, Texas, and ended at Cisco, Texas. It was carried on under a bill of lading according to the forms of the Interstate Commerce Commission, which provided that the rates should be 70 cents per 100 pounds on rugs classified as not exceeding in value $75. The bill of lading was stamped with the following notation: "Valuation on rugs less than $75 per 100 pounds." The rugs in the transit were much damaged by acid and were said to be worth but $5 apiece after the damage. The shippers claim that their value when shipped was $95 apiece. Under the valuation noted on the bill of lading, their value could not have exceeded $60 because each rug weighed 40 pounds.

The Texas Court of Civil Appeals, which was the highest court to which the case could be brought (because the Supreme Court of Texas held that it had no jurisdiction), relied upon Article 708 of the Revised Statutes of Texas, which provides that railroad companies within the State shall not limit or restrict their liability, as it existed at common law, by any general or special notice, or by inserting exceptions in the bill of lading, or by memorandum given upon the receipt of the goods for transportation, or in any other manner, and that any such special agreement shall be invalid. These rugs were shipped March 13, 1920, after the second Cummins Amendment to the Interstate Commerce Act (August 9, 1916, 39 Stat. 441, c. 301), which permits to carriers a limitation of liability upon property received for transportation concerning which the carrier shall have been authorized by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper, or agreed upon in writing as the release value of the property. In such a case, such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released.

The writ of error is brought here under § 237 of the Judicial Code, on the ground that this order of the Interstate Commerce Commission fixing the classification and rates thereunder is an authority exercised under the United States which by the contention of the shippers was drawn in question, and its validity denied by the state court. *Champion Lumber Company* v. *Fisher*, 227 U. S. 445, 451. It is not disputed, therefore, that, if the order of the Interstate Commerce Commission and the Western Classification No. 56 apply, the judgment of the Court of Civil Appeals of Texas should be reversed; if Article 708 R. S. of Texas applies, the judgment should be affirmed.

The *Shreveport Case* began by an application of railway carriers running west from Shreveport across the Texas State line to Houston and Dallas, to set aside an order of the Interstate Commerce Commission, on the ground that it exceeded its authority. The order was made in a proceeding initiated by the Railroad Commission of Louisiana before the Commission. The complaint in that proceeding was that the carriers maintained unreasonable rates from Shreveport, Louisiana, to various points in Texas, and that the carriers, in the adjustment of their rates over their respective lines, discriminated in favor of traffic within the State of Texas and against similar traffic between Shreveport and Texas points; that Shreveport competed in business with Houston and Dallas, and that the rates from Dallas and Houston east to intermediate points in Texas were much less, according to distance, than from Shreveport westward to the same points, with conditions similar in all respects. The difference was substantial, and injuriously affected the commerce of Shreveport. The Commission found that interstate rates out of Shreveport to main Texas points were unreasonable, and it fixed maximum rates for that traffic. It also found that the rates from Houston and Dallas

eastward to Texas points were so low as to be a discrimination and an undue and unlawful preference against Shreveport and against its interstate commerce. Accordingly, the carriers were directed to desist from charging higher rates from Shreveport to Dallas and Houston, respectively, and intermediate points, than were contemporaneously charged for the same carriage from Dallas and Houston to Shreveport for equal distances. The Commerce Court sustained the order, and so did this Court, leaving it to the Railroad Company to bring about the equality required either by decreasing the rates from Shreveport to the Texas points between that city and Dallas and Houston, or by increasing the intrastate rates from Houston and Dallas eastward to the Texas points between those cities and Shreveport. This Western Classification, which the carrier applied in this case, was adopted by the railroads under the authority of the Interstate Commerce Commission thus sustained in the *Shreveport Case*. That authority rested on the supremacy of federal authority in respect to interstate commerce. The intrastate rates fixed by the Texas State Railway Commission from Houston and Dallas eastward to Texas points were a discrimination against the interstate traffic between Shreveport and those same points; and, therefore, it was held to be within the power of the Interstate Commerce Commission, in preventing such unlawful discrimination under the Interstate Commerce Act, to direct the railways to ignore the Texas Commission rates and to establish rates, not unduly discriminating against interstate commerce, in intrastate traffic. Such an order, of course, included classification as well as rates. The two are so bound together in the regulation of interstate commerce that the effect of both must be reasonable and without undue discrimination. The Interstate Commerce Commission, therefore, had full authority to issue this order for the adoption of the Western Classification

for intrastate points between Houston and Cisco, both in Texas. The conflict between the Revised Statutes of Texas and the order of the Interstate Commerce Commission can only be settled by recognition of the supremacy of the federal authority. It is plain from the agreed statements of facts that the only recovery which could be had under the Western Classification in this case was less than $60. The limitation of liability was in accordance with the second Cummins Amendment, was properly agreed to, and was binding upon the shipper as well as the carrier.

The judgment of the Court of Civil Appeals must be reversed and the cause remanded for further proceedings not inconsistent with this opinion.

Reversed.

LANCASTER ET AL., RECEIVERS OF THE TEXAS & PACIFIC RAILWAY, *v.* McCARTY ET AL.

ERROR TO THE COURT OF CIVIL APPEALS FOR THE SECOND SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS.

No. 148. Submitted December 11, 1924.—Decided March 9, 1925.

The second Cummins Amendment, (August 9, 1916, c. 301, 39 Stat. 441,) authorizing carriers to limit liability upon property received for transportation to the value declared in writing by the shipper, where the rates are based on such value pursuant to authority from the Interstate Commerce Commission,—*held* applicable, and controlling the state law, in respect of a claim for damage to goods